SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1934

No. 751

ROY T. MOBLEY, PETITIONER,

vs.

THE NEW YORK LIFE INSURANCE COMPANY

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT

INDEX

	Original	Print
Proceedings in U. S. C C. A., Fifth Circuit	A	1
Caption ..... (omitted in printing)	A	
Record from D. C. U. S., Southern Mississippi	1	
Caption ..... (omitted in printing)	1	
Record from Circuit Court of Harrison County	1	1
Declaration in case Roy T. Mobley vs. New York Life Insurance Co. (U. S. District Court, No. 908)	1	1
Exhibit "A"—Insurance policy issued to Roy B. Mobley by the New York Life Insurance Co., dated August 7, 1928	5	3
Summons issued to New York Life Insurance Co., and Sheriff's Return thereon	38	26
Certificate of clerk of mailing copy of summons, etc.	39	26
Acknowledgment of service by Insurance Commissioner	40	27
Petition for removal	41	28
Notice of filing of petition for removal	44	29
Bond for removal ..... (omitted in printing)	45	
Order of removal	47	30
Clerk's certificate ..... (omitted in printing)	48	

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	Original	Print
Declaration in case of Roy T. Mobley vs. New York Life Insurance Co. (U. S. District Court, No. 1001)	49	31
First special plea of defendant in case No. 1001	53	33
Defendant's pleas of general issue in case No. 998	63	41
Defendant's pleas of general issue in case No. 1001	64	42
Defendant's notice under the general issue in case No. 1001	65	42
Order consolidating cases Nos. 998 and 1001	66	44
Replication of plaintiff in Case No. 998 to defendant's special plea in Case No. 1001	67	44
Exhibit No. 1—Letter, W. Y. Guilbert, Special Agent, N. Y. Life Insurance Co. to R. T. Mobley, dated April 29, 1931	70	47
Exhibit No. 2—Letter, W. Y. Guilbert, Special Agent, N. Y. Life Insurance Co. to R. T. Mobley, dated May 3, 1931	71	48
Exhibit No. 3—Letter, F. S. Lantry, Chairman, to Roy T. Mobley, dated July 6, 1931	72	49
Exhibit No. 4—Letter, —— —— to W. Y. Gilbert, dated July 11, 1931	73	50
Exhibit No. 5—Letter, —— —— to W. Y. Guilbert, dated July 14, 1931	74	51
Exhibit No. 6—Letter, W. Y. Guilbert to R. T. Mobley, dated July 16, 1931	77	53
Exhibit No. 7—Memo. signed WYG to Mr. Mobley, undated	78	54
Exhibit No. 8—Letter, Special Agent, to C. E. Randall, Cashier, dated July 23, 1931	79	55
Exhibit No. 9—Letter, C. E. Randall, Cashier, to W. Y. Guilbert, dated August 3, 1931, also Memo. signed W. Y. Guilbert thereon	79	55
Exhibit No. 10—Letter, C. R. Randall, Cashier, to Roy T. Mobley, dated August 27, 1931	80	55
Exhibit No. 11—Blank request to apply dividends left on deposit in reduction of premium and interest, if any	81	56
Exhibit No. 12—Blank premium lien note payable to the N. Y. Life Insurance Co. for $4.39, dated September 7, 1931	82	56
Exhibit No. 13—Letter, —— —— to W. Y. Guilbert, dated September 25, 1931	84	58
Exhibit No. 14—Letter, C. E. Randall, Cashier, to R. T. Mobley, dated September 26, 1931	85	59
Exhibit No. 15—Statement waiving payment of semi-annual premium, dated October 5, 1931 for $25.04 due July 2, 1931	86	60
Exhibit No. 16—Statement waiving payment of semi-annual premium, dated October 6, 1931 for $66.35 due August 7, 1931	86	60
Exhibit No. 17—Letter, E. M. Randall, Cashier, to Roy T. Mobley, dated October 9, 1931	87	61

	Original	Print
Exhibit No. 18—Letter, W. Y. Guilbert to Roy T. Mobley, dated October 12, 1931	88	61
Exhibit No. 19—Letter, C. E. Randall, Cashier, to Roy T. Mobley, dated October 31, 1931	89	62
Exhibit No. 20—Notice sent to Roy T. Mobley of amount premium due, $66.35, February 7, 1932	90	63
Exhibit No. 21—Reminder sent to Roy T. Mobley of amount of premium due $66.35, date due February 7, 1933	91	64
Exhibit No. 22—Letter, F. S. Lantry, Chairman, to Roy T. Mobley, dated March 19, 1932	92	65
Exhibit No. 23—Letter, F. S. Lantry, Chairman, to Roy T. Mobley, dated April 20, 1932	93	65
Exhibit No. 24—Letter, C. C. Randall, Cashier, to Roy T. Mobley, dated April 7, 1932	94	66
Exhibit No. 25—Letter, C. E. Randall, Cashier, to to Roy T. Mobley, dated May 18, 1932	94	66
Exhibit No. 26—Letter, Roy T. Mobley to N. Y. Life Insurance Co., dated December 22, 1932	95	67
Exhibit No. 27—Letter, Frank S. Lantry to R. T. Mobley, dated December 27, 1932	96	67
Exhibit No. 28—Letter, Frank S. Lantry to Roy T. Mobley, dated January 19, 1933	96	68
Exhibit No. 29—Application of Roy T. Mobley to N. Y. Life Insurance Co., for continuance of disability benefits, dated January 24, 1933	97	68
Exhibit No. 30—Letter, Roy T. Mobley to N. Y. Life Insurance Co., dated February 22, 1933	99	70
Exhibit No. 31—Letter, R. T. Mobley to N. Y. Life Insurance Co., dated February 28, 1933	100	70
Exhibit No. 32—Letter, Roy T. Mobley to N. Y. Life Insurance Co., dated March 6, 1933	101	71
Exhibit No. 33—Letter, N. Y. Life Insurance Co., Home Office, to Roy T. Mobley, dated April 13, 1933 with blank form for reinstatement enclosed	101	71
Bill of exceptions	104	73
Caption	104	73
Testimony of Dr. J. E. Beck	104	74
Agreed statement of facts	108	76
Exhibit—Letter, Roy T. Mobley to W. Y. Guilbert, dated March 30, 1931	109	77
Exhibit—Letter, C. E. Randall, Cashier to W. Y. Guilbert, dated March 31, 1931 with statement of R. T. Mobley to W. Y. Guilbert thereon	111	78
Exhibit—Statement of Dr. H. R. Shands dated April 13, 1931, attending physician	113	79
Exhibit—Statement of Dr. N. R. Currie, dated April 13, 1931, attending physician	114	80
Exhibit—Statement of Roy Thurston Mobley, dated April 9, 1931	116	82

	Original	Print
Exhibit—Report of Dr. J. C. Huggins, Medical Examiner, dated April 15, 1931	118	83
Exhibit—Memorandum furnished by N. Y. Life Insurance Co., home office to its branch agency at Jackson, Miss., dated May 25, 1931	120	85
Exhibit—Letter, W. Y. Guilbert, to Roy T. Mobley, dated April 29, 1931	120	85
Exhibit—Letter, W. Y. Guilbert to Roy T. Mobley, dated March 3, 1931	121	86
Exhibit—Report of Dr. J. C. Huggins, Medical Examiner, dated June 24, 1931	123	87
Exhibit—Letter, F. C. Lantry, Chairman, to Roy T. Mobley, dated July 6, 1931 (omitted)	125	88
Exhibit—Letter, —— —— to W. Y. Guilbert, dated July 11, 1931	125	89
Exhibit—Letter, —— —— to W. Y. Guilbert, dated July 14, 1931 (omitted)	126	
Exhibit—Letter, W. Y. Guilbert to R. T. Mobley, dated July 16, 1931 (omitted)	127	
Exhibit—Memo. signed WYG to Mr. Mobley (omitted)	127	
Exhibit—Letter, Special Agent to C. E. Randall, Cashier, dated July 23, 1931 (omitted)	127	
Exhibit—Letter, Dr. N. R. Currie to N. Y. Life Insurance Co., dated July 21, 1931	128	90
Exhibit—Letter, F. S. Lantry, Chairman, to Dr. J. C. Huggins, dated July 30, 1931	128	91
Exhibit—Memorandum furnished by N. Y. Life Insurance Co., home office to branch agency in Jackson, Miss., dated July 30, 1931	129	92
Exhibit—Letter, F. S. Lantry, Chairman, to Dr. J. C. Huggins, dated August 17, 1931	130	92
Exhibit—Letter, F. S. Lantry, Chairman, to W. Y. Guilbert, dated August 3, 1931, also Memo. signed W. Y. Guilbert thereon (omitted)	130	
Exhibit—Letter, C. R. Randall, Cashier, to Roy L. Mobley, dated August 27, 1931 (omitted)	131	
Exhibit—Blank Request to apply dividends left on deposit in reduction of premium and interest, if any (omitted)	131	
Exhibit—Blank Premium Lien Note payable to the N. Y. Life Insurance Co., for $4.39, dated September 7, 1931 (omitted)	131	
Exhibit—Report of Dr. J. C. Huggins, Medical Examiner, dated August 7, 1931	131	93
Exhibit—Letter, —— ——, to W. Y. Guilbert, dated September 25, 1931 (omitted)	133	
Exhibit—Letter, C. E. Randall, Cashier, to R. T. Mobley, dated September 26, 1931 (omitted)	133	

	Original	Print
Exhibit—Letter, F. S. Lantry, Chairman, to Dr. J. C. Huggins, dated September 2, 1931	134	95
Exhibit—Letter, F. S. Lantry, to Dr. J. C. Huggins, dated September 17, 1931	134	95
Exhibit—Memo. of Report of Dr. J. C. Huggins, Medical Examiner, dated August 7, 1931	135	96
Exhibit—Memorandum from N. Y. Life Insurance Co., home office to Jackson, Miss., branch office, dated October 6, 1931	135	96
Exhibit—Telegram, Committee on Disability Claims to Chas. E. Randall, Cashier, N. Y. Life Insurance Co., dated October 6, 1931	136	97
Exhibit—Statement waiving payment of semi-annual premium, dated October 5, 1931, for $25.04, due on July 2, 1931 (omitted)	136	
Exhibit—Letter, E. M. Randall, Cashier, to Roy T. Mobley, dated October 9, 1931 (omitted)	137	
Exhibit—Letter, W. Y. Guilbert, to Roy T. Mobley, dated October 12, 1931 (omitted)	137	
Exhibit—Letter, C. E. Randall, Cashier, to Roy T. Mobley, dated October 31, 1931 (omitted)	137	
Exhibit—Report of Dr. J. C. Huggins, Medical Examiner, dated February 2, 1932	137	98
Exhibit—Notice sent to Roy T. Mobley of Amount Premium Due $66.35, date due February 7, 1932 (omitted)	139	
Exhibit—Reminder sent to Roy T. Mobley of Amount of Premium Due $66.35, date due February 7, 1933 (omitted)	139	
Exhibit—Letter, F. S. Lantry, Chairman, to Roy T. Mobley, dated March 19, 1932 (omitted)	140	
Exhibit—Letter, C. C. Randall, Cashier, to Roy T. Mobley, dated April 7, 1932 (omitted)	140	
Exhibit—Letter, F. S. Lantry, Chairman, to Roy T. Mobley, dated April 20, 1932 (omitted)	140	
Exhibit—Letter, F. S. Lantry, Chairman, to Dr. Lawrence W. Long, dated April 20, 1932	141	100
Exhibit—Report of Dr. L. W. Long, Medical Examiner, dated April 28, 1932	142	101
Exhibit—Letter, F. S. Lantry, Chairman, to Dr. James A. Dorsett, dated May 4, 1932	143	102
Exhibit—Letter, Dr. J. E. Beck to New York York Life Insurance Co., home office, dated May 4, 1932	144	102
Exhibit—Report of Dr. J. A. Dorsett, Medical Examiner, dated 1932	145	103
Exhibit—Letter, R. T. Mobley to N. Y. Life Insurance Co., dated May 18, 1932	146	104
Exhibit—Letter, C. E. Randall, Cashier, to Roy T. Mobley, dated May 18, 1932 (omitted)	147	

	Original	Print
Exhibit—Telegram, Committee on Disability Claims to Chas. E. Randall, Cashier, dated May 21, 1932	147	105
Exhibit—Memo. from N. Y. Life Insurance Co., home office, to Jackson branch office dated May 21, 1932, allowing disability claim and waiving premiums	148	105
Exhibit—Letter, R. T. Mobley to N. Y. Life Insurance Co., dated July 17, 1932	148	106
Exhibit—[illegible]er, R. T. Mobley to N. Y. Life Insurance Co., dated December 17, 1932	149	106
Exhibit—Letter, Frank S. Lantry, Chairman, to R. T. Mobley, dated December 27, 1932 (omitted)	150	
Exhibit—Report of Confidential Inspector at Jackson, Miss., dated December 29, 1932	150	107
Exhibit—Letter, Frank S. Lantry, Chairman to Roy T. Mobley, dated January 19, 1933 (omitted)	152	
Exhibit—Application of Roy T. Mobley to N. Y. Life Insurance Co., for continuance of Disability Benefits, dated January 24, 1933	152	109
Exhibit—Report of Dr. J. C. Huggins, Medical Examiner, dated January 26, 1933	155	111
Exhibit—Letter, Frank S. Lantry, Chairman, to Dr. J. C. Huggins, dated February 8, 1933, with reply of Dr. Huggins, thereon	157	112
Exhibit—Letter, R. T. Mobley to N. Y. Life Insurance Co., dated February 22, 1933 (omitted)	158	
Exhibit—Letter, R. T. Mobley to N. Y. Life Ins. Co., dated February 28, 1933 (omitted)	158	
Exhibit—Letter, F. T. Lantry, Chairman, to Roy T. Mobley, dated March 1, 1933	159	113
Exhibit—Letter, Roy T. Mobley to N. Y. Life Insurance Co., dated March 6, 1933 (omitted)	159	
Exhibit—Letter, F. S. Lantry, Chairman, to Roy T. Mobley, dated March 9, 1933	160	114
Exhibit—Letter, R. W. Thompson, Jr., Atty., to N. Y. Life Insurance Co., Dated March 9, 1933	160	114
Exhibit—Letter, F. S. Lantry, Chairman, to R. W. Thompson, Atty., dated March 16, 1933	161	115
Exhibit—Letter, F. S. Lantry, Chairman, to R. W. Thompson, dated March 17, 1933	162	116
Exhibit—Letter, N. Y. Life Insurance Co., Home Office, to Roy T. Mobley, dated April 13, 1933	163	117
Exhibit—Letter, N. Y. Life Insurance Co., Home Office, to Roy T. Mobley, dated June 5, 1933	164	118
Exhibit—Premium notice, amount of premium due $35.04, maturing July 9, 1933	165	118

	Original	Print
Exhibit—Letter, Mise, Thompson & Mise, Attys., to N. Y. Life Insurance Co., dated July 8, 1933	166	119
Exhibit—Letter, F. S. Lantry, Chairman, to S. C. Mise, Attorney, dated July 12, 1933	167	120
Exhibit—Letter, F. S. Lantry, Chairman, to Dr. J. A. Dorsett, dated July 17, 1933	168	120
Exhibit—Report of Dr. J. A. Dorsett, Medical Examiner, dated July 24, 1933	169	121
Exhibit—Letter, F. S. Lantry, Chairman, to Dr. J. A. Dorsett, dated July 28, 1933	171	122
Exhibit—Letter, Dr. J. A. Dorsett addressed "Dear Sir," dated August 2, 1933	171	123
Exhibit—Statement waiving payment of the semi-annual premium of $66.35 falling due on February 7th and August, 1933, etc., dated August 9, 1933	172	123
Objection of plaintiff to Exhibit—Letter from N. Y. Life Insurance Co. to Dr. J. A. Dorsett, Dated July 17, 1933	175	126
Objection of plaintiff to Exhibit—Report of Dr. Dorsett to N. Y. Life Ins. Co., dated July 24, 1933	176	126
Objection of plaintiff to Exhibit—Letter, F. S. Lantry, Chairman, to Dr. J. A. Dorsett, dated July 28, 1933	176	126
Objection of plaintiff to Exhibit—Letter, Dr. J. A. Dorsett, dated August 2, 1933	176	126
Testimony of Dr. Fred S. Gay	176	126
Dr. E. A. Copeland	177	127
F. E. Cottrell	179	128
A. L. Evans	181	130
Defendant's motion to exclude plaintiff's evidence	183	132
Testimony of J. C. Huggins	183	132
Frank S. Lantry	186	134
Ruling of the court on objections to the testimony, etc., which had been reserved by the court	191	137
Opinion of the court granting a peremptory instruction for defendant	191	138
Exception of plaintiff to ruling of the court in granting a peremptory instruction for defendant	192	138
Order approving and allowing bill of exceptions	192	138
Judgment in case No. 998	193	139
Motion for new trial in case No. 998	194	140
Order overruling motion for new trial, etc., in case No. 998 and exception thereto	194	140
Judgment in case No. 1001	195	141
Motion for new trial in case No. 1001	196	141
Order overruling motion for new trial, etc., in case No. 1001 and exception thereto	196	142

	Original	Print
Order granting extension of time to prepare bill of exceptions	197	142
Agreement of counsel as to contents of record	198	...
Petition for appeal, order allowing same and fixing amount of bond	199	143
Appeal bond (omitted in printing)	201	
Assignment of errors	202	145
Prayer for reversal	206	148
Waiver of service of citation	207	148
Præcipe for record	207	149
Clerk's certificate (omitted in printing)	210	
Recital as to citation	210	150
Minute entry of argument and submission	211	151
Opinion, Sibley, J.	212	151
Judgment	219	156
Clerk's certificate	220	156
Order allowing certiorari	221	159

[fols. a & b] [Captions omitted]

[fol. 1]

IN CIRCUIT COURT OF HARRISON COUNTY

To December Term, 1933

No. 9617. Biloxi No. 998

ROY T. MOBLEY, Plaintiff,

versus

NEW YORK LIFE INSURANCE COMPANY, Defendant

[fol. 2] DECLARATION—Filed July 25, 1933

Plaintiff, Roy T. Mobley, would respectfully show unto the Court the following facts, to-wit:

That he is a resident citizen of the State of Mississippi.

That the defendant, New York Life Insurance Company, is a corporation duly organized and existing under the laws of the State of New York, and is a citizen of the State of New York, with its home office at No. 346 Broadway, New York, N. Y.

Plaintiff avers that said defendant, New York Life Insurance Company, is engaged in the business of writing life insurance for remuneration, and on the 7th day of August, 1928, issued its policy of insurance upon the life of plaintiff herein in the sum of five thousand dollars, with the further agreement that the company agreed to pay to the said insured the sum of fifty dollars each month and waive payment of premiums as provided in said policy, upon plaintiff's paying to the said defendant the sum of sixty-six dollars and thirty-five cents as advance payment of premium, and a like sum every six months thereafter which also included the sum of two dollars and sixty cents for double indemnity and six dollars and fifty cents for the disability benefits that were provided in said policy.

That it thereupon became and was the duty of the defendant company to carry out the agreements stipulated in said policy, the original of which said policy is hereto attached, marked Exhibit "A".

Plaintiff avers that said policy provided that whenever the insured is disabled by bodily injury or disease that he [fol. 3] is wholly prevented from performing any work from following any occupation, or from engaging in any business for remuneration or profit, and upon receipt of proof by the company that the insured is totally disabled as above defined and will be continuously disabled for life, that the said company would waive premiums and would pay the sum of ten dollars per thousand upon the face of the policy, monthly.

Plaintiff avers that he became totally and permanently disabled after the issuance of said policy and while it was still in full force and effect, and furnished proof to the said company that he was totally and permanently disabled and said company waived premiums for several months and paid him disability payments at the rate of fifty dollars per month for several months including up and until January 13th, 1933, but on said date, to-wit, January 13th, 1933, the defendant willfully and wrongfully declined to make any further payments because of the total and permanent disability and notified plaintiff on March 1st, 1933, that it would not make any further payments under said policy and wholly breached its policy on said date.

Plaintiff avers that on March 9th plaintiff, through the attorneys authorized to represent him, made demand upon said defendant company for the total sum of twenty-eight thousand nine hundred eighty dollars, being the cash value of the life expectancy of the said insured that he was entitled to recover under said policy, and on March 16th said defendant company, by letters addressed to the attorneys for the plaintiff, advised plaintiff that they would review the file, and on March 17th said defendant company, by letter addressed to the attorneys for the plaintiff, declined to make said payment or to make any further disability payments and completely breached said contract.

[fol. 4] Plaintiff avers that he is now, and has been for many months prior to March 1st, 1933, totally and permanently disabled by bodily injury and disease, having become so disabled while said policy was still in full force and effect, and that plaintiff has made application to the defendant company for all disability benefits provided in his policy and furnished due proof that he was totally and permanently disabled, and said company has declined, as afore-

said, to pay said disability benefits monthly as they fell due under the policy, but on March 1st, 1933, as aforesaid, wholly breached its contract, and that the said defendant has made no payments in any amount whatever since the January 1933 payment, heretofore alleged.

Plaintiff avers that the defendant has wholly failed, neglected and refused to pay for him the premium which became due on February 2nd, 1933, as it was required to do under said policy.

Plaintiff avers that said defendant has totally breached, rejected and repudiated its said contract of insurance with the plaintiff, and all without just cause.

Plaintiff avers that he is now 33 years of age and has a life expectance of — years. That during the remainder of his life he will continue to be totally disabled and prevented from performing any work for compensation or profit or from following any gainful occupation whatsoever. That the sum of fifty dollars per month for a period of — years amounts to the sum of twenty-eight thousand nine hundred eighty dollars.

Plaintiff avers that because he is now totally and permanently disabled, he is not an insurable risk and is not able to take out a policy of insurance payable in a lump sum upon his death.

[fol. 5] Plaintiff avers that by reason of the breach, rejection and repudiation of the aforesaid policy, No. 10,340,538, by the said defendant company, plaintiff is entitled to recover, in addition to the monthly benefits, the value of the policy of five thousand dollars.

Wherefore, plaintiff sues and demands judgment against said defendant company in the sum of thirty-three thousand nine hundred eighty dollars ($33,980).

Roy T. Mobley, Plaintiff. Mize, Thompson & Mize, Attorneys.

EXHIBIT "A" TO DECLARATION

New York Life Insurance Company,

A Mutual Company,

Agrees to pay to Eunice H., Wife of the Insured Beneficiary (with right on the part of the Insured to change the Beneficiary in the manner provided herein) Five Thou-

sand Dollars (The Face of This Policy) upon receipt of due proof of the death of Roy T. Mobley the Insured, or Ten Thousand Dollars (Double the Face of This Policy) if such death resulted from accident as defined under "Double Indemnity" and subject to the provisions therein set forth.

And upon receipt of due proof that the Insured is totally and presumably permanently disabled before age 60, as defined under "Total and Permanent Disability", The Company agrees to pay to the insured Fifty Dollars each month, and to waive payment of premiums, as provided therein.

[fol. 6] This contract is made in consideration of the application therefor and of the payment in advance of the sum of $66.35, the receipt of which is hereby acknowledged, constituting the first premium and maintaining this Policy for the period termination on the Seventh day of February Nineteen Hundred and Twenty-Nine, and of a like sum on said date and every Six calendar months thereafter during the life of the Insured.

(The above premium included $2.60 for the Double Indemnity Benefit and $6.50 for the Disability Benefits.)

The premium paying period may be shortened by application of dividend additions and dividend deposits as provided herein.

This Policy takes effect as of the Seventh day of August Nineteen Hundred and Twenty-Eight, which day is the anniversary of the Policy.

The Benefits and Provisions printed or written by the Company on the following pages are a part of this contract as fully as if they were recited at length over the signatures hereto affixed.

In Witness Whereof the New York Life Insurance Company has caused this contract to be signed this Seventh day of August Nineteen Hundred and Twenty-Eight,

Darwin P. Kingsley, President. Frederick M. Johnson, Secretary. E. E. M. Xieman, Registrar.

928-6 O. L. D.-D. 1.
Age 26.
Examined NMW.
NMW.

[fol. 7] Insurance Payable at Death. Premiums Payable During Life Unless Dividends Applied to Shorten Premium Paying Period. Disability Benefits. Double Indemnity for Fatal Accident. Annual Participation in Surplus.

Double Indemnity

The Double Indemnity provided on the first page hereof shall be payable upon receipt of due proof that the death of the Insured resulted directly and independently of all other causes from bodily injury effected solely through external, violent and accidental means and occurred within ninety days after such injury.

Double Indemnity shall not be payable if the Insured's death resulted from self-destruction, whether sane or insane; from the taking of poison or inhaling of gas, whether voluntary or otherwise; from committing an assault or felony; from war or any act incident thereto; from engaging in riot or insurrection; from participation as a passenger or otherwise in aviation or aeronautics; or, directly or indirectly, from infirmity of mind or body, from illness or disease, or from any bacterial infection other than bacterial infection occurring in consequence of accidental and external bodily injury. The Company shall have the right and opportunity to examine the body, and to make an autopsy unless prohibited by law.

Double indemnity shall not apply to the Temporary Insurance or to the Paid-up Insurance provided herein under "Surrender Values", or to any Dividend Additions provided under "Participation in Surplus—Dividends".

Upon written request of the Insured on any anniversary [fol. 8] of this Policy and upon return of this Policy for proper indorsement, the Company will terminate this provision and thereafter the premium shall be reduced by the amount charged for the Double Indemnity Benefit.

Total and Permanent Disability

Disability shall be considered total whenever the Insured is so disabled by bodily injury or disease that he is wholly prevented from performing any work, from following any occupation, or from engaging in any business for remuneration or profit, provided such disability occurred after the insurance under this Policy took effect and before the

anniversary of the Policy on which the Insured's age at nearest birthday is sixty.

Upon receipt at the Company's Home Office, before default in payment of premium, of due proof that the Insured is totally disabled as above defined, and will be continuously so totally disabled for life, or if the proof submitted is not conclusive as to the permanency of such disability, but establishes that the Insured is, and for a period of not less than three consecutive months immediately preceding receipt of proof has been, totally disabled as above defined, the following benefits will be granted.

(a) Waiver of Premium.—The Company will waive the payment of any premium falling due during the period of continuous total disability, the premium waived to be the annual, semi-annual or quarterly premium according to the mode of payment in effect when disability occurred.

[(b) Income Payments.—The Company will pay to the Insured the monthly income stated on the first page hereof ($10 per $1,000 of the face value of this Policy) for each [fol. 9] completed month from the commencement of and during the period of continuous total disability.] If disability results from insanity, payment will be made to the beneficiary in lieu of the Insured.

In event of default in payment of premium after the Insured has become totally disabled as above defined, the Policy will be restored and the benefits shall be the same as if said default had not occurred, provided due proof that the Insured is and has been continuously from date of default so totally disabled and that such disability will continue for life or has continued for a period of not less than three consecutive months, is received by the Company not later than six months after said default.

The total and irrecoverable loss of the sight of both eyes or of the use of both hands or of both feet or of one hand and one foot shall constitute total disability for life.

Before making any income payment or waiving any premium, the Company may demand due proof of the continuance of total disability, but such proof will not be required oftener than once a year after such disability has continued for two full years.

Upon failure to furnish such proof, or if the Insured performs any work, or follows any occupation, or engages in

any business for remuneration or profit, no further income payments shall be made nor premiums waived.

The sum payable in any settlement of the Policy shall not be reduced by income payments made nor by premiums waived under the above provisions. Dividends, loan and surrender values shall be the same as if the waived premi- [fol. 10] ums had been duly paid. Any disability benefit due but unpaid at the time of the Insured's death shall be payable to the person entitled to the proceeds of the Policy.

Disability Benefits shall not auply if the disability of the Insured shall result from self-inflicted injury or from military or naval service in time of war; nor shall these benefits apply to the Temporary Insurance or to the Paid-up Insurance provided herein under "Surrender Values", or to any Dividend Additions provided under "Participation in Surplus—Dividends".

Any premium due on or after the anniversary of the Policy on which the age of the Insured at nearest birthday is sixty, will be reduced by the amount of premium charged for Disability Benefits. Upon written request of the Insured on any anniversary of this Policy and upon return of this Policy for proper indorsement, the Company will terminate this provision and thereafter the premium shall be reduced by the amount charged for Disability Benefits.

Participation in Surplus—Dividends

The proportion of divisible surplus accruing upon this Policy shall be ascertained annually. Beginning at the end of the second insurance year, and on each anniversary thereafter, such surplus as shall have been apportioned by the Company to this Policy shall at the option of the Insured be either

(a) Paid in cash; or

(b) Applied toward payment of premiums; or

(c) Applied to purchase a participating paid-up addition to the sum insured (herein referred to as Dividend Additions); or

[fol. 11] (d) Left to accumulate at such rate of interest as the Company may declare on funds so held, but at a rate never less than three per cent compounded and cred-

ited annually. Such accumulated dividends (herein referred to as Dividend Deposits) may be withdrawn in cash by the Insured on any anniversary of the Policy or shall be payable at the maturity of the policy to the person entitled to its proceeds.

If no option is selected, the dividend will be applied to the purchase of a dividend addition to the sum insured. The Insured may surrender any dividend addition for cash at any time not later than three months after any default in the payment of premium, and the cash value thereof shall never be less than the original cash dividend.

Dividends May Be Applied to Decrease Number of Premium Payments or Mature Policy as An Endowment

Whenever the cash value of the Policy including the cash value of any dividend additions and dividend deposits shall equal the net single premium at the attained age of the Insured for a fully paid participating Policy of the same kind and amount as this policy, calculated on the same basis as the premium on this Policy, the Company, upon written request of the Insured, will endorse this Policy as fully paid, whereupon the payment of premium will be discontinued; or, whenever said cash value shall equal the face amount of this Policy, the Company, upon due surrender of the Policy, will pay the face amount of the Policy in cash, less any indebtedness to the Company.

Miscellaneous Benefits

Assignment. —Any assignment of this Policy must be made in duplicate and one copy filed with the Company at [fol. 12] its Home Office. The Company assumes no responsibility for the validity of any assignment.

Change of Beneficiary.—The Insured may from time to time change the beneficiary, unless otherwise provided by indorsement on this Policy or unless there be an existing assignment of this Policy. Every change of beneficiary must be made by written notice to the Company at its Home Office accompanied by the Policy for indorsement of the change thereon by the Company, and unless so indorsed the change shall not take effect. After such indorsement the change will relate back to and take effect as of the date

the Insured signed said written notice of change whether the Insured be living at the time of such indorsement or not, but without prejudice to the Company on account of any payment made by it before receipt of such written notice at its Home Office. In the event of the death of any beneficiary before the Insured the interest of such beneficiary shall vest in the Insured, unless otherwise provided herein.

Grace.—If any premium is not paid on or before the day it falls due the policy-holder is in default; but a grace of one month (not less than thirty days) will be allowed for the payment of every premium after the first, during which time the insurance continues in force. If death occurs within the period of grace the overdue premium will be deducted from the amount payable hereunder.

Interest Allowed at Settlement of Death Claim.—Interest will be allowed on the proceeds of the Policy payable as death claim from date of receipt of due proof of death at any office of the Company until the date settlement is made at the Home Office. Interest shall be at the rate [fol. 13] declared by the Company on such funds, but at a rate not less than three per cent per annum.

Reinstatement.—This Policy may be reinstated at any time within five years after any default, upon written application by the Insured and presentation at the Home Office of evidence of insurability satisfactory to the Company and upon payment of overdue premium with six per cent interest thereon from their due date. Any indebtedness to the Company at date of default must be paid or reinstated with interest thereon in accordance with the loan provisions of the Policy.

Privilege of Change to Other Plans of Insurance.—At any time before default in payment of premium, provided the insured is less than 55 years of age and has not become disabled under the disability provisions hereof, the Insured may, without medical re-examination, exchange this Policy for a Policy upon any plan of insurance having a higher rate of premium issued by the Company at the time this Policy takes effect for the same amount as this Policy and containing the same Disability and Double Indemnity Benefits. Such exchange shall be effective upon surrender

of this Policy and the payment of the difference in premiums with compound interest at the rate of six per cent per annum from the due date of each premium to the date of exchange; allowance will be made for any larger cash dividends on the new plan. The new Policy will take effect as of the date of this Policy and the premium will be at the rate which would have been charged if the Policy had been originally issued on the new plan.

Residence, Travel and Occupation.—This Policy is free of conditions as to residence, travel, occupation, and mili- [fol. 14] tary or naval service, except as provided herein under Disability and Double Indemnity Benefits.

Rights of Insured.—The Insured, during his life time, and without the consent of the beneficiary, may receive every benefit, exercise every right and enjoy every privilege conferred upon the Insured by this Policy, unless otherwise provided by indorsement hereon.

Optional Methods of Settlement

The Insured, or in case the Insured shall not have done so, the beneficiary after the Insured's death, may, by written notice to the Company at its Home Office, make the proceeds of this Policy, in whole or in part, payable under one of the following options. Any such election or change in election shall not take effect until indorsed on the Policy by the Company at its Home Office. The optional methods of settlement are available whether such proceeds are payable as a death claim or on maturity as an Endowment, or upon surrender of the Policy for its cash value, provided the instalment of interest payment to any payee is not less than $10.

Option 1.—The proceeds in whole or in part may be left with the Company subject to withdrawal at any time on demand in sums of not less than one hundred dollars. The Company will credit interest annually on the net proceeds so left with it at such rate as it may each year declare on such funds, and guarantee that the rate shall not be less than three per cent.

Option 2.—The proceeds in whole or in part may be made payable in equal annual, semi-annual, quarterly or monthly

instalments for a fixed period as may be agreed upon, in accordance with the following table.

[fol. 15] Option 3.—The proceeds in whole or in part may be made payable in equal annual, semi-annual, quarterly or monthly instalments for a fixed period of five, ten or twenty years, as may be agreed upon, and for the remaining lifetime of the payee, in accordance with the following table.

Option 4.—The proceeds in whole or in part may be left with the Company at interest until the death of the payee. The Company will pay interest thereon annually, semi-annually, quarterly or monthly, as may be agreed upon, at such rate as the Company may declare each year on such funds, and guarantees that the interest per one thousand dollars of the proceeds shall be not less than $30 when paid annually, $14.89 when paid semi-annually, $7.42 when paid quarterly, or $2.47 when paid monthly.

Option 5.—The proceeds in whole or in part may be left with the Company at interest and paid in equal annual, semi-annual, quarterly or monthly instalments of such amount as may be agreed upon until the entire proceeds left with the Company, including interest thereon as provided in Option 1 have been paid, provided that the fixed amount payable each year shall be not less than five per cent of the original proceeds left with the Company.

The first instalment under Options 2 and 3 will be payable on the date when the proceeds of the Policy become due and the instalment payment on each anniversary of the first payment will be increased by such additional interest, in excess of three per cent per annum, as the company may declare on such funds for that year. The additional interest under Option 2 will be calculated on the unpaid instalments commuted at three per cent per annum, and under [fol. 16] Option 3 on the unpaid instalments for the fixed period selected, computed at three per cent per annum.

When the proceeds of the Policy become payable the Company will deliver to each payee a certificate evidencing the rights and benefits of such payee under the option selected.

At the death of any payee any unpaid sum left with the Company under Options 1, 4 or 5 with accrued interest to

date of payment, or the commuted value at three per cent of any unpaid instalments, under Option 2, or the commuted value at three per cent of any unpaid instalments for the fixed period selected under Option 3, will be paid in one sum to the executors or administrators of the payee, unless otherwise agreed in writing.

Unless otherwise directed in writing by the Insured, the benefits under the above options shall not be transferable nor subject to commutation or incumbrance during the lifetime of the payee.

Monthly and Annual Payments for each $1,000 of Proceeds of Policy

The semi-annual and quarterly instalments are 50.37% and 25.28% of the annual instalment under Option 2, and not less than these respective percentages under Option 3.

[fol. 17]

Option 2

Number of years' payments	Monthly payment	Annual payment	Number of years' payments	Monthly payment	Annual payment
2	$42.86	$507.39	17	$6.23	$73.74
3	28.99	343.23	18	5.96	70.59
4	22.06	261.19	19	5.73	67.78
5	17.91	211.99	20	5.51	65.25
6	15.14	179.22	21	5.73	67.78
7	13.16	155.83	22	5.15	60.91
8	11.68	138.30	23	4.99	59.04
9	10.53	124.69	24	4.84	57.32
10	9.61	113.81	25	4.71	55.75
11	8.86	104.92	26	4.59	54.30
12	8.24	97.53	27	4.47	52.97
13	7.71	91.29	28	4.37	51.74
14	7.26	85.94	29	4.27	50.59
15	6.87	81.32	30	4.18	49.53
16	6.53	77.29			

[fol. 18]

Option 3—Life Income to Payee With Income Guaranteed For

Age of payee when proceeds become payable	5 Years Certain		10 Years Certain		20 Years Certain	
	Monthly payment	Annual payment	Monthly payment	Annual payment	Monthly payment	Annual payment
10 and under	$3.81	$44.85	$3.75	$44.21	$3.58	$42.20
11	3.83	45.07	3.77	44.41	3.59	42.36
12	3.85	45.30	3.79	44.62	3.61	42.54
13	3.87	45.54	3.81	44.84	3.62	42.71
14	3.89	45.78	3.83	45.07	3.64	42.90
15	3.91	46.03	3.85	45.29	3.65	43.08
16	3.94	46.27	3.87	45.53	3.67	43.27
17	3.96	46.52	3.89	45.76	3.69	43.47
18	3.98	46.77	3.91	45.99	3.70	43.66
19	4.00	47.02	3.93	46.23	3.72	43.87
20	4.02	47.28	3.95	46.48	3.74	44.07
21	4.05	47.55	3.97	46.74	3.76	44.29
22	4.07	47.84	4.00	47.01	3.78	44.52

Option 3—Life Income to Payee With Income Guaranteed For

Age of payee when proceeds become payable	5 Years Certain		10 Years Certain		20 Years Certain	
	Monthly payment	Annual payment	Monthly payment	Annual payment	Monthly payment	Annual payment
23	4.10	48.14	4.02	47.20	3.80	44.75
24	4.12	48.45	4.05	47.59	3.82	45.00
25	4.15	48.77	4.07	47.90	3.84	45.25
[fol. 19]						
26	4.18	49.12	4.10	48.22	3.86	45.51
27	4.21	49.47	4.13	48.56	3.89	45.79
28	4.25	49.85	4.16	48.91	3.91	46.07
29	4.28	50.24	4.19	49.28	3.94	46.37
30	4.32	50.65	4.23	49.66	3.96	46.67
31	4.35	51.08	4.26	50.07	3.99	46.99
32	4.39	51.53	4.30	50.49	4.02	47.32
33	4.43	52.01	4.33	50.93	4.05	47.66
34	4.48	52.50	4.37	51.39	4.08	48.01
35	4.52	53.02	4.42	51.87	4.11	48.38
36	4.57	53.56	4.46	52.38	4.14	48.75
37	4.62	54.13	4.51	52.90	4.17	49.14
38	4.67	54.73	4.55	53.45	4.21	49.54
39	4.73	55.36	4.60	54.03	4.24	49.96
40	4.78	56.02	4.65	54.63	4.28	50.38
41	4.84	56.71	4.71	55.26	4.32	50.82
42	4.91	57.43	4.77	55.91	4.35	51.27
43	4.97	58.19	4.83	56.60	4.39	51.73
44	5.04	58.99	4.89	57.31	4.43	52.20
45	5.12	59.83	4.99	58.06	4.48	52.69
46	5.19	60.71	5.02	58.84	4.52	53.18
[fol. 20]						
47	5.27	61.64	5.09	59.66	4.56	53.68
48	5.36	62.61	5.17	60.51	4.60	54.20
49	5.45	63.63	5.24	61.40	4.65	54.71
50	5.54	64.70	5.32	62.33	4.69	55.24
51	5.64	65.83	5.41	63.30	4.74	55.77
52	5.74	67.02	5.49	64.30	4.78	56.30
53	5.85	68.26	5.58	65.35	4.83	56.84
54	5.97	69.57	5.68	66.44	4.87	57.37
55	6.09	70.95	5.78	67.57	4.92	57.90
56	6.22	72.40	5.88	68.75	4.96	58.43
57	6.35	73.93	5.98	69.98	5.00	58.95
58	6.49	75.53	6.09	71.24	5.05	59.46
59	6.64	77.22	6.21	72.55	5.09	59.96
60	6.80	78.99	6.32	73.91	5.13	60.45
61	6.96	80.85	6.44	75.31	5.17	60.92
62	7.13	82.81	6.57	76.75	5.20	61.37
63	7.31	84.87	6.70	78.23	5.24	61.80
64	7.51	87.03	6.83	79.75	5.27	62.20
[fol. 21]						
65	7.71	89.31	6.96	81.30	5.30	62.59
66	7.92	91.69	7.09	82.89	5.33	62.94
67	8.14	94.19	7.22	84.50	5.36	63.27
68	8.37	96.81	7.37	86.14	5.38	63.57
69	8.61	99.56	7.51	87.79	5.40	63.84
70	8.86	102.43	7.65	89.46	5.42	64.08
71	9.13	105.44	7.79	91.12	5.44	64.29
72	9.40	108.57	7.93	92.79	5.45	64.48
73	9.69	111.84	8.07	94.44	5.47	64.64
74	9.99	115.25	8.21	96.06	5.48	64.77
75	10.30	118.78	8.34	97.65	5.48	64.88

Option 3—Life Income to Payee With Income Guaranteed For

Age of payee when proceeds become payable	5 Years Certain		10 Years Certain		20 Years Certain	
	Monthly payment	Annual payment	Monthly payment	Annual payment	Monthly payment	Annual payment
76	10.62	122.44	8.47	99.21	5.49	64.97
77	10.95	126.22	8.59	100.71	5.50	65.05
78	11.29	130.13	8.71	102.14	5.50	65.11
79	11.64	134.14	8.82	103.51	5.50	65.15
80	12.00	138.25	8.92	104.80	5.51	65.19
81	12.36	142.44	9.02	106.01	5.51	65.21
82	12.73	146.70	9.11	107.12	5.51	65.23
83	13.09	151.00	9.19	108.14	5.51	65.24
84	13.46	155.34	9.26	109.06	5.51	65.25
85 and over	13.83	159.67	9.32	109.89	5.51	65.25

[fol. 22] Guaranteed Loan and Surrender Values

Loans.—After three full years' premiums have been paid and before default in the payment of premium, the Company, upon receipt of this Policy and a Loan Agreement satisfactory to the Company, will advance to the Insured on the sole security of this Policy any amount which, with interest, shall be within the limit of the Cash Surrender Value of this Policy. Interest on the loan will be at the rate of six per cent per annum payable annually on the anniversary of the Policy. Any existing indebtedness to the Company on this Policy, including interest thereon, will be deducted from the amount of said loan. If interest is not paid when due it shall be added to the principal. All or any part of the indebtedness may be repaid at any time while the Policy is in force. Failure to repay such indebtedness or to pay interest will not avoid the Policy, but whenever the amount of the total indebtedness equals the Cash Surrender Value, the Policy shall become void one month after the Company shall have mailed notice to the last known address of the Insured and of the assignee of record, if any.

Surrender Values.—In event of default in payment of premium after three full years' premiums have been paid, the following benefits shall apply:

(a) Temporary Insurance.—Insurance for the face of the Policy plus any dividend additions and any dividend deposits and less the amount of any indebtedness hereon, shall, upon expiry of the period of grace, be continued automatically as Temporary Insurance as from the date of default for such term as the Cash Surrender Value less any indebt-

edness hereon will purchase as a net single premium at the attained age of the Insured, according to the American experience table of mortality and interest at 3 per cent. [fol. 23] This Temporary Insurance will be without participation in surplus.

(b) Participating Paid-up Insurance.—Within three months after such default, but not later, the Insured may surrender this Policy and elect in place of such Temporary Insurance to have this Policy indorsed for the amount of Participating Paid-up Insurance which the Cash Surrender Value at date of default less any indebtedness hereon, will purchase as a net single premium at the attending age of the Insured at the date of default according to the American experience table of mortality and interest at 3 per cent. The insured may obtain a loan on such Paid-up Insurance or Surrender it within one month after any anniversary for its cash surrender value.

(c) Cash Surrender Value.—If the policy shall not have been indorsed for Participating Paid-up Insurance, the Insured, within three months after such default, but not later, may surrender this Policy and all claims thereunder, and receive its Cash Surrender Value as at date of default less any indebtedness hereon. The Cash Surrender Value shall be the reserve on the face amount of the Policy at date of default, omitting fractions of a dollar per thousand of insurance, and the reserve on any outstanding dividend additions and any outstanding dividend deposits, and less a surrender charge for the third to the ninth years, inclusive, of not more than one and one-half per cent of the face of the Policy. The reserve shall be computed on the basis of the American experience table of mortality and interest at 3 per cent.

Cash Surrender Value of Fully Paid Policy.—If this Policy shall have become fully paid by its terms, the Insured may surrender the Policy and all claims thereunder within [fol. 24] one month after any anniversary of the policy and receive its cash surrender value less any indebtedness hereon. Such cash surrender value shall be computed on the basis described under (c) above.

The value in the "Table of Guaranteed Loan and Surrender Values" are computed in accordance with the above provisions, on the basis of $1,000 of face amount, assuming

that premiums have been duly paid for the number of years stated, that there is no indebtedness to the Company, that there are no outstanding dividend additions nor dividend deposits, and after deduction of the surrender charge, if any.

Table of Guaranteed Loan and Surrender Values

After policy has been in force	Cash surrender value or loan value for each $1,000 of face amount	Paid-up insurance for each $1,000 of face amount	Temporary insurance from date of default	
			Years	Days
3	$23	$61	2	335
4	30	78	3	297
5	39	100	4	353
6	47	121	6	42
7	61	151	7	302
8	74	182	9	200
9	88	212	11	89
10	102	241	12	317
11	114	265	14	16
12	127	288	15	34
13	139	311	16	4
14	153	334	16	287
15	166	356	17	161
16	180	379	17	357
17	194	401	18	147
18	208	423	18	268
19	223	444	18	358
20	239	465	19	55
[fol. 25]				
21	254	486	19	91
22	270	507	19	106
23	286	527	19	101
24	303	547	19	79
25 Years	319	566	19	41

Ed. June '16. O. L. 1,000. 26.

The Loan obtainable at the end of any year may be secured during that year (less interest) if the premium for the entire year has been paid. Values for later years will be computed on the same basis and will be furnished on request.

Term Insurance in Case of Loan

Any loan under this Policy may be covered by term insurance as follows:

1. The Insured must furnish evidence of insurability satisfactory to the Company.

2. The premium shall be computed at the attained age of the Insured at the time the term insurance is made or renewed.

3. Term insurance shall not extend beyond the next anniversary, but under the same conditions may be renewed from year to year. No term insurance shall be made or renewed after age sixty five.

4. If the indebtedness on account of a loan shall be reduced or repaid or shall be satisfied in accordance with the [fol. 26] terms of the Loan Agreement, the term insurance shall thereupon automatically be reduced or canceled accordingly and any unearned premium paid therefor will be refunded.

5. Term insurance takes effect upon delivery to the Insured of the Company's Policy therefor. The sum payable as term insurance shall be applied to the cancellation of the indebtedness.

Premiums for Each $100 of Term Insurance

Insured's attained age	Premium for one year	Insured's attained age	Premium for one year	Insured's attained age	Premium for one year
15	$0.73	32	$0.83	49	$1.26
16	0.74	33	0.84	50	1.33
17	0.74	34	0.85	51	1.40
18	0.74	35	0.86	52	1.48
19	0.75	36	0.87	53	1.57
20	0.75	37	0.89	54	1.67
21	0.76	38	0.90	55	1.79
22	0.76	39	0.92	56	1.91
23	0.77	40	0.94	57	2.05
24	0.77	41	0.96	58	2.21
25	0.78	42	0.99	59	2.38
26	0.78	43	1.01	60	2.57
27	0.79	44	1.04	61	2.78
28	0.79	45	1.07	62	3.01
29	0.80	46	1.11	63	3.26
30	0.81	47	1.15	64	3.65
31	0.82	48	1.20		

[fol. 27] For periods less than one year, the premium shall be at the rate of one-tenth of the one year's premium for each month and fraction of a month.

Other Provisions.

Age.—If the age of the Insured has been misstated, the amount payable hereunder shall be such as the premium paid would have purchased at the correct age.

Payment of Premiums.—All premiums are made payable on or before their due date at the Home Office of the Company or to an authorized agent of the Company, but only in exchange for the Company's Official premium re-

ceipt signed by the President, a Vice-President, a Second Vice-President, a Secretary or the Treasurer of the Company, and countersigned by the person receiving the premium. No person has any authority to collect a premium unless he then holds said official premium receipt. The premium may be made payable annually, semi-annually or quarterly in advance at the Company's respective rates for such modes of payment and the mode of payment may be changed by agreement in writing and not otherwise. The payment of the premium shall not maintain the Policy in force beyond the day when the next payment becomes due, except as to the benefits provided for herein after default in premium payment.

Indebtedness.—Any indebtedness to the Company against this policy will be deducted in any settlement thereof.

Self-Destruction.—In event of self-destruction during the first two insurance years, whether the Insured be sane or insane, the insurance under this Policy shall be a sum equal [fol. 28] to the premium thereon which have been paid to and received by the Company and no more.

The Contract.—The Policy and the application therefor, copy of which is attached hereto, constitute the entire contract. All statements made by the Insured shall, in absence of fraud, be deemed representations and not warranties, and no statement shall avoid the Policy or be used in defense to a claim under it, unless it is contained in the written application and a copy of the application is indorsed upon or attached to this Policy when issued. No agent is authorized to make or modify this contract, or to extend the time for the payment of premium, or to waive any lapse or forfeiture or any of the Company's rights or requirements. All benefits under this Policy are payable at the Home Office of the Company in the City and State of New York.

Incontestability.—This Policy shall be incontestable after two years from its date of issue except for non-payment of premium and except as to provisions and conditions relating to Disability and Double Indemnity Benefits.

Register of Change of Beneficiary.

Note.—No change of Beneficiary shall take effect unless indorsed on this Policy by the Company at the Home Office.

Date of request	Beneficiary	Indorsed by
.....	.....	.....
.....	.....	.....
.....	.....	.....

Indorsements

This copy should be carefully examined and if any error, or omission is found, full particulars with the number of the policy, should be sent immediately to the Home Office of the Company, No. 346 Broadway, New York City.

lo 340-538.

[fol. 29] Application to the New York Life Insurance Company—Part I

I, Roy Thurston Mobley. (Print name in full.)

1. Residence—State, Mississippi; County, Hinds; Town, Jackson; Street, Robinson, 508 Lampton Bldg., No. 1013 R. F. D.

Place of Business— ——.
Present Occupation—Atty. at Law.
State exact duties in full—Practicing Law.
Other Occupation— ——.
Born at Utica, Miss., on 3 day of June, 1902.
Name of Firm or Employer (if any)—Self. None.
Married. [Not Married.]* (Strike Out One.)
Race or Nationality—Cau.
Former Residence—Utica, Miss.
No answer required unless change has taken place within past two years.
Former Place of Business— ——.
Former Firm or Employer— ——.
Send all Communications to Residence. Place of Business. (Strike out one.)

Apply to the New York Life Insurance Company for Insurance as follows:

2. Sum to be Insured, $5,000. Premiums, how payable, Semi-annual. Age nearest birthday, 26.

3. Plan of Insurance—Ord. Life—

with { Disability benefits,
without { [Disability benefits increasing income.]*
Double Indemnity Benefit.

*[Words in brackets erased in copy.]

(Strike out benefits not desired.)
·1% monthly.
Date policy as of
{[Date of this Application.]*
{Date Policy is written.
(Strike out one.)

[fol. 30] 4. Dividend to be—

a. [Paid in cash;]*
b. [Applied toward payment of premiums;]*
c. [Applied to purchase additional paid up insurance;]*
d. Left to accumulate at interest, subject to my order;
e. [Applied on the Accelerative Endowment Plan.]*
(Strike out four.)

Note.—Option applied only to endowment policies containing the Accelerative Endowment option.

5. I designate as beneficiary to receive the proceeds of policy in event of death and reserve the right to change the Beneficiary from time to time. Beneficiary (Print name in full)—Eunice Hurst Mobley. Who resides at 1013 Robinson St., Jackson, Miss. Relationship to me—Wife.

6. a. The following is all the insurance I now have on my life; State name of company and amount. (If none, say none)—N. Y. Life, $2000.

b. The insurance for which I am now applying is not included to take the place of insurance carried with this or any other company. If it is, give particulars: None.

7. Of the insuranse on my life the amount which includes benefits in event of total disability is $——. (If none, say none)—None.

8. No company has declined to issue insurance on my life or issued or offered to issue insurance on my life differing [fol. 31] from the insurance applied for, except as follows: (If none, say none)—N. Y. L. Co. charged on extra prem. to 4/9/28 acct. operation.

9. Additions or Amendments (For Home Office use only): ——.

It is mutually agreed as follows: That the insurance hereby applied for shall not take effect unless and until the

*[Words in brackets erased in copy.]

policy is delivered to and received by the applicant and the first premium thereon paid in full during his lifetime, and then only if the applicant has not consulted or been treated by any physician since his medical examination; provided, however, that if the applicant, at the time of making this application, pays the agent in cash the full amount of the first premium for the insurance applied for in questions 2 and 3 and so declares in this application and receive from the agent a receipt therefor on the receipt form which is attached hereto, and if the Company, after medical examination and investigation, shall be satisfied that the applicant was, at the time of making this application, insurable and entitled under the Company's rules and standards to the insurance, on the plan and in the amount applied for in Questions 2 and 3, at the Company's published premium rate corresponding to the applicant's age, then said insurance shall take effect and be in force under and subject to the provisions of the policy applied for from and after the time this application is made, whether the policy be delivered to and received by the applicant or not. 2. That a receipt on the form attached as a coupon to this application form is the only receipt the agent is authorized to give for any payment made before the delivery of the policy. 3. That only the President, a Vice-President, a Second Vice-President, a Secretary or the Treasurer of the Company can make, modify or discharge contracts, or waive [fol. 32] any of the Company's rights or requirements; that notice to or knowledge of the soliciting agent or the Medical Examiner is not notice to or knowledge of the Company, and that neither one of them is authorized to accept risks or to pass upon insurability. 4. That by receiving and accepting said policy, any additions or amendments hereto which the company may make and refer to in Question 9 above, entitled "Additions or Amendments" are hereby ratified.

Dated at Jackson, Miss., this 28 day of July, 1928.

Signature of the person applying for insurance:

Roy Thurston Mobley.

(Write the name in full.)

Witnessed by W. G. Hunter.

Other Agents: x

Names and residences of— ——.

10-340-530.

Application to the New York Life Insurance Company—
Part II

10-340-538.

Notice to Medical Examiner: Use Only Black Ink. This Examination to be Photographed.

Do not use dashes or ditto marks in answering questions.

Answers to the Medical Examiner

This Examination must be made in private; no agent or third person being present.

[fol. 33] 1. A. What is your occupation? (Full details.) A. Lawyer.

B. How long have you been engaged in your present occupation? B. 1 Year.

C. What was your previous occupation? C. Student.

D. Have you ever changed your occupation or place of residence on account of your health? (If so give full details.) D. No.

2. Do you intend to change your occupation or make a journey outside of Continental United States or Canada? (If so give full details.) No.

3. A. How many aerial flights have you taken and when last? A. No.

B. State whether as passenger or pilot and whether you are a Reservist? B. No.

4. In what States have you lived in the last ten years, and which years in each? (If outside the U. S., in which countries and which years in each.) Miss.

5. A. How frequently, if at all, and in what quantity do you drink beer, wine, spirits or other intoxicants? A. No.

B. How frequently, if at all, and in what quantity. have you drunk any of them in the past? B. None.

C. Have you within the last five years drunk any of them to excess? C. No.

D. Do you now take or have you ever taken, morphine, cocaine, or any other habit forming drugs? D. No.

[fol. 34] 6. A. Have you now pending any other application for insurance on your life or for the reinstatement of insurance? "Yes" or "No". No. Names of each company or insurer.

B. Have you ever examined either on or in anticipation of an application for insurance without receiving such insurance? No.

C. Have you ever been declined for life insurance or for the reinstatement of life insurance? No.

D. Have you ever been offered a policy differing in plan or amount or in premium rate from that applied for? Yes, N. Y. Life, 1925. Operation Feb. 1921, for duolenal ulcer.

7. A. Have you had any accident or injury or undergone any surgical operation? "Yes" or "No." Yes. If the answer to any query is "Yes" give details and within five years name and address of every physician consulted. Operation for duolenal ulcer 1921.

B. Have you been under observation or treatment in any hospital, asylum or sanatorium? Yes, 13 days.

C. Has albumin or sugar been found in your urine? No.

D. Have you been found to have high blood pressure? No.

E. Have you raised or spat blood? No.

F. Have you gained or lost in weight in the last year? Gain? No. Lost? No. Cause? No.

[fol. 35]

	"Yes" or "No"	Name of ailment or disease	No. of attacks	Date	Duration	Severity	Results and if within five years name and address of every physician consulted
8. Have you consulted a physician for or suffered from any ailment or disease of							
A. The Brain or Nervous System?	No.						
B. The Heart, Blood Vessels or Lungs?	No.						
C. The Stomach or Intestines, Liver, Kidneys or Bladder	Yes.	Duodenal ulcer	1	1920	1 year	Severe Operation 1921	Dr. Peevey, Jackson, Miss.
D. The Skin, Middle Ear or Eyes?	No.						
9. Have you had Rheumatism, Gout or Syphilis?	No.						
10. Have you consulted a physician for any ailment or disease not included in your above answers?	No.						

[fol. 36]

	Name and address	Date	Reason for consultation, examination or treatment
11. What physician or physicians, if any, not named above, have you consulted or been examined or treated by within the past five years? (If none, say none)	None	No.	No

	Age if living	Condition of health, if not good, give full details	Age at death	Cause of death	How long ill
12. Family Record—					
Father	71	Good			
Mother	59	Good			
Brothers 4	35 to 23	All in good health			
Sisters	37	Good	2	Congestion Dy.	

[fol. 37] 13. A. Is any person in your immediate household now ill with consumption? (If so state who, and what precautions are being taken.) No.

B. Has any person in your immediate household suffered or dies of that disease within the past year? No.

On behalf of myself and of every person who shall have or claim any interest in any insurance made hereunder, I declare that I have carefully read each and all of the above answers, that they are each written as made by me, and that each of them is full, complete and true, and agree that the Company believing them to be true shall rely and act upon them.

I expressly waive on behalf of myself and of any person who shall have or claim any interest in any policy issued hereunder, all provisions of law forbidding any physician or other person who has heretofore attended or examined me, or who may hereafter attend or examine me, from disclosing any knowledge or information which he thereby acquired.

Dated this 28 day of July, 1928.

Signature of the person applying for Insurance:

Roy Thurston Mobley.

Witnessed by S. E. Huggin, M. D., Medical Examiner.

New York Life Insurance Company to Roy Mobley. No. 10,340,538. Amount, $5,000. Semi-Annual Premium $66.35, payable on the 7th day of August and February. Jackson Branch.

[fol. 38] Notice: It is not necessary for the insured or the beneficiary to employ the agency of any person in collecting the insurance under this Policy, or in receiving any of its benefits. Time and expense will be saved by writing direct to the Home Office, 346 Broadway, New York City. Insurance payable at death. Premiums payable during life unless dividends applied to shorten premium paying period. Disability Benefits. Double Indemnity for fatal accident. Annual Participation in Surplus.

[File endorsement omitted.]

IN CIRCUIT COURT OF HARRISON COUNTY

SUMMONS AND RETURN

THE STATE OF MISSISSIPPI,
Harrison County:

To the Sheriff of Hinds County—Greeting:

This is to command you to summon New York Life Insurance Company, a Corporation, defendant, to appear before the Circuit Court of Harrison County, Mississippi, at the Court House thereof in the City of Gulfport, in said county and State, on the First Monday of December, A. D. 1933, to answer the suit of Roy T. Mobley, plaintiff, in an [fol. 39] action of debt for total sum of $33,980.00 (on policy No. 10 340 538); and have this summons there then.

Witness my hand and official seal, this the 24th day of July, A. D. 1933.

A. J. Ramsay, Clerk of said Circuit Court, by E. G. Lindsey, D. C. (Seal.) Mize, Thompson & Mize, Attorney- for Plaintiff.

I have this day executed the within writ personally on the within named defendant New York Life Insurance Company, a corporation, by delivering a true copy of said writ to Geo. D. Riley, Insurance Commissioner for the State of Mississippi and Attorney for process for the said non-resident defendant, this the 27 day of July, 1933.

Warren Ferguson, Sheriff, by S. D. Donnell, D. S.

No. 9617. Circuit Court Harrison County. Roy T. Mobley vs. New York Life Insurance Company. Summons. To be served upon Insurance Commissioner of State of Mississippi. Term, December, 1933.

IN CIRCUIT COURT OF HARRISON COUNTY

CERTIFICATE OF MAILING COPY OF SUMMONS OR PROCESS—
Filed July 24, 1933

THE STATE OF MISSISSIPPI,
Harrison County:

I, A. J. Ramsay, Clerk of the Circuit Court of said county and State, hereby certify that I have on this the 24th day of

[fol. 40] July, 1933, mailed as required by law, a true copy of the Original Summons or process issued in Cause No. 9617, styled Roy T. Mobley vs. New York Life Insurance Company, addressed to defendant as follows: New York Life Insurance Company, 346 Broadway, New York City, N. Y.

Given under my hand and official seal of office this the 26th day of July, 1933.

A. J. Ramsay, Clerk Circuit Court, Harrison County, Mississippi. (Seal.)

(Registry Receipt U. S. Post Office, Gulfport, Mississippi, attached to said certificate.)

[File endorsement omitted.]

In Circuit Court of Harrison County

Acknowledgment of Service by Insurance Commissioner—Filed July 29, 1933

Insurance Department, State of Mississippi

Geo. D. Riley, Commissioner

Jackson, July 27, 1933.

New York Life Ins. Co., New York, N. Y.

In re Roy T. Mobley vs. Yourselves, in Circuit Court of Harrison County, Gulfport, Mississippi

Gentlemen:

Under registered cover, I hand you herein copy of summons served on me in the above styled case, which is re- [fol. 41] turnable to the Court named therein on the 1st Monday. December 1933.

Kindly acknowledge receipt of this letter.

Yours very truly, Geo. D. Riley, Insurance Commissioner.

Enc.: Register.

CC: A. J. Ramsay, Circuit Clerk, Gulfport, Miss.

[File endorsement omitted.]

IN CIRCUIT COURT OF HARRISON COUNTY

No. 9617

[Title omitted]

PETITION OF DEFENDANT FOR REMOVAL TO THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DIVISION OF THE SOUTHERN DISTRICT OF MISSISSIPPI, AT BILOXI—Filed Nov. 1, 1933

Comes the New York Life Insurance Company, defendant in the above entitled cause, a corporation organized under the laws of the State of New York, and domiciled and hav- [fol. 42] ing its residence in the City of New York in said State, and shows unto the Court:

(1) That at the time the suit was filed in the above entitled cause, and at all times prior thereto, now, and at all times since said date, this defendant was, has been and is now a citizen and actual resident of the State of New York, having its domicile in the City of New York in said State, from which it has never migrated, but is now, and always has been, since its incorporation, a citizen and actual resident of the State of New York.

(2) That the suit of the plaintiff herein is one of a civil nature, whereof the District Court of the United States for the Southern Division of the Southern District of Mississippi, at Biloxi, had, at the time of the filing of the declaration herein, and now has, original jurisdiction; that said suit is now pending in the Circuit Court of Harrison County, Mississippi, the style of said suit being Roy T. Mobley, Plaintiff, vs. New York Life Insurance Company, Defendant, and being Cause No. 9617 on the docket of the Circuit Court of Harrison County, Mississippi.

(3) Petitioner shows unto the Court that said suit is a controversy wholly between citizens of different states; that the plaintiff is and was at the time of the filing of said suit, a citizen and actual resident of the State of Mississippi, and the defendant is now, and was at the time this suit was filed, and at all times before and since has been a corporation organized under the laws of the State of New York, and that said suit is a controversy which can be fully determined as between the plaintiff and this defendant.

(4) The petitioner shows unto the Court that the amount involved in such suit, exclusive of interest and costs, ex-

[fol. 43] ceeds the sum of Three Thousand Dollars ($3,000.00), in that plaintiff, in his declaration, demands that judgment be rendered in his favor against this petitioner in the sum of $33,980.00.

(5) The petitioner further shows unto the Court that this petition is filed in point of time before the petitioner is required by the laws of the State of Mississippi, or the rules of this Court, to plead, answer or demur to the declaration filed against petitioner herein.

(6) The petitioner further shows unto the Court that it has given to the plaintiff written notice of this petition and bond hereto attached for the removal of this cause prior to the filing of the same, as required by law, and that a copy of said notice and bond, with proof of service therein, is hereto attached.

(7) The petitioner further shows unto the Court that it tenders herewith a bond, with good and sufficient surety, conditioned according to the statutes of the United States and in reference thereto.

(8) Petitioner prays that this petition, with bond and proof of notice, be received and filed; that this Court will proceed no further herein except to make an order of removal, and to accept the said bond and surety, and to cause the record herein to be removed to the District Court of the United States for the Southern Division of the Southern District of Mississippi at Biloxi.

New York Life Insurance Company, by Wm. H. Watkins, Attorneys.

[fol. 44] *Duly sworn to by Wm. H. Watkins. Jurat omitted in printing.*

In Circuit Court of Harrison County

No. 9617

[Title omitted]

In re Petition to Remove Cause to the District Court of the United States for the Southern Division of the Southern District of Mississippi, at Biloxi

NOTICE OF PETITION FOR REMOVAL—Filed Nov. 1, 1933

The plaintiff and his attorneys of record in the above-styled cause are hereby given notice that the defendant,

the New York Life Insurance Company, will, on or before the first Monday in December, 1933, file in the above-en- [fols. 45 & 46] titled cause, pending in the Circuit Court of Harrison County, Mississippi, a petition, duly verified, accompanied by bond, with good and sufficient surety, as provided by law, for the removal of said suit from the Circuit Court of Harrison County, Mississippi, to the District Court of the United States for the Southern Division of the Southern District of Mississippi, at Biloxi; and, as soon thereafter as convenient to Court and counsel, will present said petition to the Judge of said Court at the county Court House in Gulfport, Harrison County, Mississippi.

New York Life Insurance Company, by Wm. H. Watkins, Attorneys.

Service acknowledged by copy.

Mize, Thompson & Mize, Attorneys for the Plaintiff.

Bond on removal for $500.00, approved and filed Nov. 1, 1933, omitted in printing.

[fol. 47] [File endorsement omitted]

IN CIRCUIT COURT OF HARRISON COUNTY

No. 9617

[Title omitted]

ORDER OF REMOVAL TO U. S. COURT—Filed Nov. 1, 1933

This cause came on to be heard on the application of the defendant, the New York Life Insurance Company, to remove said cause to the District Court of the United States for the Southern Division of the Southern District of Mississippi, at Biloxi; and the Court having considered the same, doth order and adjudge that the petition be granted, and the Clerk of this Court is directed, as required by law, to transmit the record to said Court.

Oct. 31, 1933.

W. A. White, Circuit Judge.

O. K. S. C. Mize.

[File endorsement omitted:]

[fol. 48] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 49] IN CIRCUIT COURT OF HARRISON COUNTY

Law No. 1001

No. 9688

ROY T. MOBLEY, Plaintiff,

vs.

NEW YORK LIFE INSURANCE COMPANY, Defendant

DECLARATION—Filed Nov. 1, 1933

Plaintiff, Roy T. Mobley, would respectfully show unto the Court the following facts, to-wit:

That he is a resident citizen of the State of Mississippi.

That the defendant, New York Life Insurance Company, is a corporation duly organized and existing under the laws of the State of New York, and is a citizen of the State of New York, with its home office at No. 346 Broadway, New York, New York.

Plaintiff avers that said defendant, New York Life Insurance Company, is engaged in the business of writing life insurance for remuneration, and on the 9th day of April, 1925, issued its policy of insurance upon the life of plaintiff herein in the sum of two thousand dollars, with the further agreement that the company agreed to pay the said insured the sum of twenty dollars each month and waive payment of premiums as provided in said policy, upon plaintiffs paying to the said defendant the sum of $25.04 [fol. 50] semi-annually for the disability benefits that were provided in said policy.

That it thereupon became and was the duty of the defendant company to carry out the agreements stipulated in said policy, the original of which said policy is hereto attached, marked Exhibit "A".

Plaintiff avers that said policy provided that whenever the insured is disabled by bodily injury or disease that he is wholly prevented from performing any work, from following any occupation, or engaging in any business for remuneration or profit, and upon receipt of proof by the

company that the insured is totally disabled as above defined and will be continuously disabled for life, that the said company would waive premiums and would pay the sum of ten dollars per thousand upon the face of the policy, monthly.

Plaintiff avers that he became totally and permanently disabled after the issuance of said policy and while it was still in full force and effect, and furnished proof to the said company that he was totally and permanently disabled and said company waived premiums for several months and paid him disability payments at the rate of twenty dollars per month including up and until January 13th, 1933, but on said date, to-wit, January 13th, 1933, the defendant wilfully and wrongfully declined to make any further payments because of the total and permanent disability and notified plaintiff on March 1st, 1933, that it would not make any further payments under said policy and wholly breached its policy on said date.

Plaintiff avers that on March 9th, 1933, plaintiff, through the attorney authorized to represent him, made demand upon said defendant company for the total sum of $9,600.00 [fol. 51] being the cash value of the life expectancy of the said insured that he was entitled to recover under said policy, and another policy he held with said company and on March 16, 1933, said defendant company, by letter addressed to the attorneys for the plaintiff, advised plaintiff that they would review the file, and on March 17th, 1933, said defendant company, by letter addressed to the attorneys for the plaintiff, declined to make said payment or to make any further disability payments and completely breached said contract.

Plaintiff avers that he is now, and has been for many months prior to March 1st, 1933, totally and permanently disabled by bodily injury and disease, having become so disabled while said policy was still in full force and effect, and that plaintiff has made application to the defendant company for all disability benefits provided in his policy and furnished due proof that he was totally and permanently disabled, and said company has declined, as aforesaid, to pay said disability benefits monthly as they fell due under the policy, but on March 1st, 1933, as aforesaid, wholly breached its contract, and that the said defendant has made no payments in any amount whatever since the January 1933 payment, heretofore alleged.

Plaintiff avers that the defendant has wholly failed, neglected and refused to pay for him the premium which became due on Feb. 2, 1933, as it was required to do under said policy.

Plaintiff avers that the defendant has totally breached, rejected and repudiated its said contract of insurance with the plaintiff, and all without just cause.

[fol. 52] Plaintiff avers that he is now 33 years of age and has a life expectancy of 40 years. That during the remainder of his life he will continue to be totally disabled and prevented from performing any work for compensation or profit or from following any gainful occupation whatsoever. That the sum of twenty dollars per month for a period of 40 years amounts to the sum of $9,600.00.

Plaintiff avers that because he is now totally and permanently disabled, he is not an insurance risk and is not able to take out a policy of insurance payable in a lump sum upon his death.

Plaintiff avers that by reason of the breach, rejection and repudiation of the aforesaid policy, No. 7,802,419, by the said defendant, plaintiff is entitled to recover, in addition to the monthly benefits, the value of the policy of two thousand dollars.

Wherefore, plaintiff sues and demands judgment against said defendant company in the sum of $11,600.00.

Roy T. Mobley, Plaintiff. Mize, Thompson & Mize, Attorneys.

[File endorsement omitted.]

Exhibit omitted by consent.

[fol. 53] In United States District Court for the Southern Division of the Southern District of Mississippi

No. 1001

Roy T. Mobley

vs.

New York Life Insurance Company

Defendant's First Special Plea

Comes the New York Life Insurance Company, defendant in the above entitled cause, by its attorneys, and for a

plea to the plaintiff's declaration exhibited against it in the above entitled cause, says that the plaintiff should not have and recover of and from the defendant by reason of any of the matters and things alleged in the plaintiff's declaration, for that upon the 7th day of August, 1928, the defendant executed and delivered to the plaintiff, Roy T. Mobley, its policy of insurance made Exhibit "A" to the plaintiff's declaration, said policy being number 10,340,538; that said policy provides, as appears therefrom, conditioned upon the payment by the plaintiff of insurance premiums provided therein, or the assumption thereof by the defendant upon receiving at its home office in New York City, New York, due proof of the assured's death, that the defendant shall pay to plaintiff's estate the sum of $5,000.00; that, in addition thereto, the defendant bound and obligated itself to pay the plaintiff fifty dollars per month for each completed month if and when the insured became so disabled by bodily injury or disease that he is wholly prevented from performing any work, from following any occupation, or from engaging in any business for remuneration or profit, provided such disability occur after the policy in question take effect and before the anniversary of the insured's sixtieth birthday, and further provided that the insured, before default in payment of premium, should give the defendant due proof of such total [fol. 54] disability. The policy further provided that if the proof submitted was not conclusive as to the permanency of such disability but established that the assured, for a period of not less than three consecutive months immediately prior to receipt of proof was totally disabled, the company would pay the disability claim hereinbefore set out and would waive the payment of any premium falling due during the period of such continuous total disability.

The defendant shows unto the Court that prior to the 13th day of February, 1931, the plaintiff submitted to the defendant proof from which it appeared and the defendant believed that for a period of not less than three consecutive months immediately preceding receipt of such proof, the plaintiff was totally disabled, as defined in said policy, whereupon as of January 13, 1931, payable February 13, 1931, the defendant approved the plaintiff's disability claim for $50.00 per month and made a written

waiver of the payment of any premium falling due during the period of continuous total disability. That the defendant continued to pay to the plaintiff $50.00 per month monthly thereafter in accordance with the terms of said policy up to and including the monthly payment due January 13, 1933, and during such period waived the payment of all premiums falling due during said period.

That immediately following the 13th day of January, 1933, the defendant received information which it believed to be true and from which it appeared that plaintiff was not totally disabled as defined in said policy; that by reason of such information and the defendant's belief in respect thereto as aforesaid, the defendant did not pay to the plaintiff the disability benefit of $50 otherwise payable of such total disability continued upon the 13th day of February, 1933, but that, upon the other hand, upon [fol. 55] the first day of March, 1933, the defendant wrote to the plaintiff as follows:

"Mar. 1, 1933.

"Mr. Roy T. Mobley, Jackson, Miss.

Re Claim No. 64,138-B, Pol. No. 10340538, etc.

"DEAR SIR:

"Referring to the above numbered policies, upon which monthly disability income payments have been made up to and including January 13, 1933, inclusive, it appears that for some time past you have not been continuously totally disabled within the meaning of the Disability Benefit Provisions contained in the policies.

"In view of this condition, we regret to inform you that no further monthly disability income payments will be made and the premiums due on and after February 7, 1933, become payable in conformity with the terms of the contract.

"Very truly yours, —— ——, Chairman. HT:W."

Upon March 9th, 1933, the plaintiff's attorneys, Mize, Thompson & Mize, of Gulfport, Mississippi, replied to the defendant's letter of March 1st, as follows:

"March 9th, 1933.

New York Life Insurance Company, 51 Madison Avenue, New York, New York.

Re Your Policies No. 7802419 and No. 10340538—Roy T. Mobley, Insured

"GENTLEMEN:

"This is to advise you that we have been employed by Mr. Roy T. Mobley in regard to the foregoing claims which [fol. 56] have arisen under the above policies and we contemplate taking immediate legal action unless this matter is satisfactorily settled within the next seven days.

"We have in our possession your letter of March 1st, 1933, addressed to Mr. Mobley, in which you deny that he is totally disabled and that you deny any further liability under said policies by virtue of total and permanent disability and that premiums will be due on and after February 7th, 1933.

"This is to put you on notice that Mr. Mobley is now totally and permanently disabled and will continue to be so throughout the remainder of his natural life and he refuses to make any payments of premiums on either policy for the reason that you are indebted to him, and for the further reason under the terms of your contract as long as he is disabled there is a waiver of his premium.

"This is further to advise you that since you have breached your contract we now call on you to pay said policies in full for the remainder of his natural expectancy, which is thirty-four years and six months from this date which under the terms of said policies will amount to $28,980.00. We therefore make demand for the payment in full of this claim and will immediately file suit unless the matter is adjusted in the next seven days.

Yours very truly, R. W. Thompson, Jr. RWT:MS."

[fol. 57] To which letter the defendant replied as follows:

(Air Mail)

"March 16, 1933.

Re Roy T. Mobley Claim No. 64,183-B, Pols. No. 10,340,538-7,802,419

"Mr. R. W. Thompson, Jr., Attorney-at-law, 400-408 Hewes' Bldg., Gulfport, Mississippi.

"DEAR SIR:

"Your letter of March 9, 1933, in regard to the claim of the above named Insured has been received and the contents of the same has been carefully noted.

"We will accordingly review our file on the case and write to you fully, in the course of the next day or two.

Very truly yours, —— ——, Chairman. KB:ERC."

Again on March 17, 1933, the defendant wrote R. W. Thompson, one of plaintiff's counsel, as follows:

"March 17, 1933. KB:FB."

"Mr. R. W. Thompson, Attorney-at-law, Mize, Thompson & Mize, 400-408 Hewes Bldg., Gulfport, Miss.

Re Roy T. Mobley Pol. No. 10,540,538, etc., Claim No. 64,183-B

"DEAR SIR:

"Referring further to your letter dated March 9, 1933, [fol. 58] concerning the claim of the above named Insured, we wish to advise that when the Company had under consideration the question of continuing the payment of benefits on the claim after the monthly payment made as of January 13, 1933, information obtained as the result of our customary investigation indicated that the insured has been able to be up and about every day and to all appearances sufficiently recovered to permit him to resume the performance of some remunerative work. Furthermore, the Company's medical examiner in his report of the examination made January 26, 1933, advised that in his opinion the insured is capable of performing some light work of a remuneratve nature.

"Under the circumstances, since the policies provide, that the payment of disability benefits is subject to the continuance of total disability preventing the insured from performing any work or engaging in any occupation whatsoever for remuneration or profit, the Company in view of these reports could not consider the insured was any longer totally disabled as defined and discontinued the payment of benefits, to which decision we must adhere.

Yours very truly, —— ——, Chairman."

Upon June 5, 1933, the defendant wrote to the plaintiff as follows:

"New York Life Insurance Company,

51 Madison Avenue, Madison Square,
New York, N. Y.

Actuarial Department

Arthur Hunter, Vice-President and Chief Actuary,
William Macfarlane, Second Vice-President and Actuary.
[fol. 59] Davis L. S. Douglas, Actuary,
William V. Herbert, Assistant Actuary,
Walter G. Bowerman, Assistant Actuary,
James T. Phillips, Assistant Actuary.

June 5, 1933.

Mr. Roy T. Mobley, Lucedale, Mississippi.

Dear Sir:

Policy No. 10,340,538.
Due date of premium which remains unpaid, 2-7-33.
Insurance automatically continued until 6-20-37.
Amount of continued insurance, $5,000.00.

Application for reinstatement, after default in payment of premium, specified above, not having been made, notice is hereby given that pursuant to the terms of the policy the value of the policy has been applied to purchase continued insurance as stated above.

Very truly yours, Arthur Hunter, Vice-President."

Upon July 8, 1933, plaintiff's counsel wrote to the defendant the following letter:

"Gulfport, Mississippi, July 8th, 1933.

"New York Life Insurance Company, 51 Madison Avenue —Madison Square, New York City.

"In re Policy No. 10340538—Roy T. Mobley—Claim No. 64183-B

"Gentlemen:

"Your letter of June 5th to Mr. Mobley at Lucedale, Mis-
[fol. 60] sissippi, advising that you had applied the value

of the policy to purchase continued insurance, was turned over by him to us for reply.

"In reply thereto will state that we wrote you on March 9th, 1933, that Mr. Mobley was totally and permanently disabled and made demands upon you at that time for the value of the benefits provided by said policy, and you are therefore not authorized to apply the value to purchase continued insurance, and Mr. Mobley does not agree to said application.

"We expect to file suit on this matter within the next few days.

"Very truly yours, Mize, Thompson & Mize, by S. C. Mize. SCM:MD."

On July 12th, 1933, defendant wrote plaintiff's counsel as follows:

"July 12, 1933. HT:FB.

"Mr. S. C. Mize, Mize, Thompson & Mize, Attorneys at Law, 400-408 Hewes Bldg., Gulfport, Miss.

Re Roy T. Mobley, Pol. No. 10,340,538, Claim No. 64,183-B

"Dear Sir:

"We have received your letter of July 8, 1933, and are willing to give further consideration to the question of the above named Insured's claim for disability benefits. In that regard, will you please furnish us with a statement completed by the Insured's attending physician describing his condition since the early part of January, 1933.

[fol. 61] "In order that the matter may receive prompt attention we are requesting one of our physicians to call upon the Insured for the purpose of a medical examination and he may expect to hear from the doctor in that regard very shortly.

"Yours very truly, —— ——, Chairman."

The defendant alleges and avers that all of its communications with the plaintiff or his counsel were in writing and the foregoing letters constitute the entire correspondence between the plaintiff, his counsel and the defendant in respect to the failure of the defendant to pay to the plaintiff the disability claim asserted by the plaintiff under the policy sued on payable February 13, 1933. That the de-

fendant did not in said letters or either of them repudiate plaintiff's contract but merely in good faith, based upon information which it deemed to be reliable, informed the plaintiff that the conditions entitling him to have and receive from the defendant further monthly disability payments were not present in that he was not at that time totally disabled within the meaning of the policy. The defendant alleges and avers, however, that at all times it kept an open mind upon the situation, and following its letter to the plaintiff of July 12, 1933, it had one of its local physicians call upon the plaintiff and re-examine him; that the plaintiff submitted to such re-examination which took place July 24, 1933—the very date upon which this suit was filed; that in due course plaintiff received the report of the physician, and with reasonable despatch considered the same, with the result that on or prior to August 9, 1933, defendant determined as a result of such examination that probably the plaintiff continued to be totally disabled within the meaning of said policy, and accordingly, without delay, [fol. 62] upon August 9, 1933, it executed, issued and mailed the defendant's counsel a waiver of premium statement, the same being in words and figures as follows, towit:

"No. 189977

Waiver of Premium Statement

"New York life Insurance Company

51 Madison Avenue, Madison Square

"New York, August 9th, 1933.

"To the Holder of Policy No. 10,340,538, R. Mobley:

"On account of disability of the insured under the above-numbered policy, the New York Life Insurance Company hereby waives payment of the semiannual premium of $66.35 ea. on said policy falling due on the 7th day of Feb. & Aug. 1933 but without waiving or otherwise changing any of the terms or conditions of said policy.

"This statement shall have no force or effect unless it is countersigned by the Registrar of the Company.

"Thomas A. Buckner, President. Countersigned by J. W. Behan, Registrar.

Accompanying said waiver or premium statement it mailed to the defendant's counsel its draft on the Chemical Bank and Trust Company, New York City, New York, in the sum of $300.00 covering disability payments under the policy sued on from February 13, 1933, to July 13, 1933, which waiver of premium statement and draft defendant's counsel unconditionally tendered to plaintiff and his counsel, which tender was refused by plaintiff and his counsel solely on the ground that the defendant was indebted to the plaintiff in the manner and form alleged in the plaintiff's declaration; [fol. 63] that the defendant immediately following the 13th day of each month thereafter has tendered to plaintiff and his counsel the full sum of $50.00 per month covering disability income on the policy sued on up to and including the disability income accruing Oct. 13, 1933, and is willing to continue and offers to continue such disability payments so long as the plaintiff continues permanently disabled as defined in said policy. That it now tenders into Court with its plea disability income under said policy at the rate of $50.00 per month from February 13, 1933, to October 13, 1933, inclusive, together with the costs of Court accrued to this date, and will continue to make such tender into Court so long as such total disability continues.

All of which the defendant is ready to verify.

Watkins & Eager, Attorneys for Defendant.

[File endorsement omitted.]

IN UNITED STATES DISTRICT COURT

[Title omitted]

DEFENDANT'S PLEAS—Filed Nov. 21, 1933.

Comes the New York Life Insurance Company, defendant, by its attorneys, and for a plea to the plaintiff's declaration exhibited against it in the above entitled cause, says [fol. 64] that it is not indebted to the plaintiff in the manner and form alleged in said declaration, and of this, it puts itself upon the country.

Watkins & Eager, Attorneys for the Defendant.

Comes the New York Life Insurance Company, defendant, by its attorneys, and for a further plea to the plaintiff's declaration exhibited against it in the above-entitled cause, says that it did not undertake and contract in the manner and form alleged in said declaration, and of this, it puts itself upon the country.

Watkins & Eager, Attorneys for the Defendant.

[File endorsement omitted.]

IN UNITED STATES DISTRICT COURT

No. 1001

[Title omitted]

DEFENDANT'S PLEAS—Filed Nov. 24, 1933

Comes the New York Life Insurance Company, defendant, by its attorneys, and for a plea to the plaintiff's declaration exhibited against it in the above-entitled cause, says that it is not indebted to the plaintiff in the manner and form alleged in said declaration, and of this it puts itself upon the country.

Watkins & Eager, Attorneys for the Defendant.

Comes the New York Life Insurance Company, defendant, by it attorneys, and for a further plea to the plaintiff's declaration exhibited against it in the above-
[fol. 65] entitled cause, says that it did not undertake and contract in the manner and form alleged in said declaration, and of this, it puts itself upon the country.

Watkins & Eager, Attorneys for the Defendant.

NOTICE UNDER THE GENERAL ISSUE

The plaintiff and his attorneys of record will take notice that at the trial of the above-entitled cause, the defendant will offer evidence to prove, and will prove, that it did not pay the disability claim otherwise payable on the policy sued upon, maturing February 13, 1931, for that, it had

reason to believe that the plaintiff was not at that time totally and permanently disabled within the meaning of the policy sued upon. That, however, upon July 12, 1933, it asked one of its local physicians to re-examine plaintiff, which examination took place July 24, 1933. That in due course, defendant received the report of such physician, and with reasonable dispatch, considered the same, with the result that on and prior to August 9, 1933, defendant determined, as a result of such examination, that probably the plaintiff continued to be totally disabled within the meaning of said policy, and, accordingly, without delay, upon August 9, 1933, it issued and provided the plaintiff with a waiver of premium statement. Accompanying said waiver of premium statement, it tendered to the plaintiff payment of all disability claim under said policy accruing up to August 15th, 1933, which plaintiff refused to accept. That since said date, it has continued to tender to plaintiff disability benefits payment under such policy up to and including the payment accruing October 13, 1933, and is willing to continue and offers to continue such disability payments so long as the plaintiff continues disabled as defined [fol. 66] in said policy, and it now tenders into Court with its plea disability income under said policy at the rate of $20.00 per month from February 13, 1933, to October 13, 1933, inclusive, together with the cost of the Court accrued to this date, and will continue to make such tender into Court so long as such total disability continues.

Watkins & Eager, Attorneys for the Defendant.

[File endorsement omitted.]

IN UNITED STATES DISTRICT COURT

No. 998. At Law

ROY T. MOBLEY

v.

NEW YORK LIFE INSURANCE COMPANY

No. 1001. At Law

ROY T. MOBLEY

v.

NEW YORK LIFE INSURANCE COMPANY

ORDER CONSOLIDATING CASES—Filed Feb. 22, 1934

For the purposes of trial, it is ordered and adjudged that the two above styled causes be and they are hereby consolidated for purposes of trial, but separate verdicts and judgments however to be entered in each case.

This February 22, 1934.

E. R. Holmes, District Judge.

[fol. 67] IN UNITED STATES DISTRICT COURT

No. 998

[Title omitted]

REPLICATION TO SPECIAL PLEA

Comes Roy T. Mobley, plaintiff, and for replication to the defendant's special plea denies that he is not entitled to recover of and from the defendant the amount sued for in the declaration.

He admits that on the 7th of August, 1928, the defendant delivered to him its policy of insurance $10,340,538 and admits that the defendant bound itself to pay him $50.00 per month when he became disabled by bodily injury or disease to the extent that he was prevented from performing any work or following any occupation or from engaging in business for remuneration or profit as set out in the policy.

He admits that prior to the 13th of February, 1931, he submitted to the defendant proof that for a period of not less than three consecutive months immediately preceding receipt of such proof he was totally disabled as defined in the policy and admits that on January 13th, 1931, for $50.00 per month and made a written waiver of the payment of the premium next falling due but denies that the defendant continued to pay the plaintiff $50.00 per month monthly thereafter in accordance with the terms of said policy up to and including the monthly payment due January 13th, 1933, but avers that the defendant finally paid an amount equal to the monthly payments up to Jan. 13, 1933, but only after plaintiff had placed his claims in the hands of attorneys and [fol. 68] after a delay of some times from three to four months, and after repeated demands by the plaintiff for the payment as will be shown by correspondence hereinafter to be referred to.

He denies that immediately after the 13th of January, 1931, the defendant received information which it believed to be true and from which it appeared that plaintiff was not totally disabled as defined in the policy and denies that by reason of such information and the defendant's belief in regard thereto, it refused to pay the monthly disability benefit of $50.00 per month but admits that it did refuse to pay it and avers that said refusal was wilful and constituted a breach of the contract as will be hereinafter set out.

He admits the correspondence set out in the special plea transpired. He denies that the letters set out in the special plea constitute all the correspondence between the plaintiff, his counsel and the defendant in regard to the failure of the defendant to pay to the plaintiff the disability claims asserted by the plaintiff under the policy, and avers that the defendant prior to the 13th of February, 1933, and as far back as 1931 refused to waive premiums and refused to pay the claims although the plaintiff was totally disabled as they fell due, but required the plaintiff in 1931 to employ a lawyer in order to procure the payment of his claims that were due and required him to pay some of the premiums which he did under protest and which were afterwards refunded, and finally absolutely declined to waive the premium that was due on the 7th of February, 1933, and notified the plaintiff on April 13th, 1933, that his policy had lapsed and sent him a notice to that effect with an applica-

tion requesting him to sign to re-instate his policy, said correspondence is hereto attached marked as Exhibit 1 to 33 and made a part hereof as fully as if copied herein.

[fol. 69] Plaintiff denies that the defendant did not repudiate plaintiff's contract and denies it in good faith based on any information which it deemed to be reliable merely informed the plaintiff that the conditions entitling him to have and receive from the defendant monthly payments were not present in that he was not at that time totally disabled within the meaning of the policy and denies that the defendant was acting in good faih.

He denies that the defendant at all times kept an open mind on the situation as is shown by exhibits — hereinbefore referred to and avers that said defendant totally breached its contract and wilfully breached it at a time when it knew that the plaintiff was totally and permanently and forever disabled, and as shown by letters dated March 1st, 1933, and March 17th, 1933, set out in defendant's special plea.

He admits that after it had breached its contract it had a physician examine him but this was after the plaintiff had made repeated demands on the defendant for the payment of disability benefits and after it had arbitrarily and finally declined to do so and after it had again shown its position in its letter to plaintiff's attorney.

He denies that with reasonable dispatch the defendant considered his claim but admits that on August 9th, 1933, the defendant, after it had breached its contract as aforesaid sent to the plaintiff a waiver of the premium which of course the policy already provided for and he admits that the defendant tendered him the sum of $300.00 but avers that this was not the amount he was suing for and that he declined to accept same on the grounds that the defendant is indebted to him in the manner and form alleged in his declaration.

[fol. 70] He admits that the defendant has tendered him $50.00 per month since said date which he has declined to accept on the ground that the defendant has breached its contract and plaintiff is entitled to recover the full amount sued for in his declaration.

Plaintiff avers that from the inception of this claim the defendant has repeatedly breached its contract as shown by the exhibits attached to this replicatio[illegible] That prior to

the 7th of February, 1932, it sent plaintiff a demand for payment of the premium which thereafter it finally refunded to the plaintiff. That prior to the 7th of February, 1933, it sent him another notice and demand for payment of the premium and after the 7th of February, 1933, sent him still another notice that grace expired on March 10th, 1933, and that finally on the 13th of April, 1933, after it had reviewed all of its files and after it had received the notice from the attorneys that they had been employed to represent the plaintiff, it wrote him that the policy had lapsed for non-payment of premium as shown by Exhibit No. 33 to the replication.

Plaintiff avers that during all of said time he was totally and permanently disabled and had furnished to the defendant proof of such at such times and in such manner as required by the defendant, and all of the foregoing facts the plaintiff puts himself on the country.

Mize, Thompson & Mize, Attorneys for Plaintiff.

Exhibits to Replication

EXHIBIT No. 1

April, 29th, 1931.

Mr. Roy T. Mobley, Lucedale, Miss.

Re Policy Nos. 7,802,419—10,340,538—Mobley

DEAR SIR:

I am enclosing two letters just received by me from the Branch office, also check for $25.04 and two waiver of pre-
[fol. 71] mium receipts. Please return the receipts to me that were given you at the time the premium refunded was paid also the one sent you when the lien note was executed, as there are to be replaced by the waiver of premium receipts.

The check covering the monthly installments will be received in the next few days from the Home Office at which time I will mail to you promptly.

The statement No. 4 called for is to be executed by the present attending physician, so that the company may de-

termine whether or not to continue the monthly payments, after the first check is sent to you.

If I can be of any further service to you, please command me.

Sincerely yours, W. Y. Guilbert, Special Agent.
WYG.

"Life Insurance is a Service, Not a Commodity."

EXHIBIT No. 2

May 3rd, 1931.

Mr. R. T. Mobley, Lucedale, Miss.

Re Pol. Nos. 7,802,419—10,340,538

DEAR MR. MOBLEY:

Received your letter of the 30th enclosing receipts. The note will be marked canceled and the dividend will be credited back to the policy, and can either be left with the Company, or withdrawn by you in cash, should you wish to do so.

I have just received check for $80.00 covering four months, under Number 7,802,419, and check for $200.00 covering the same period on Policy No. 10,340,538. The checks are enclosed with letter from the Company stating the period covered.

If you wish to do so, I would appreciate a letter from you giving your impression of the treatment given you [fol. 72] by the New York Life and just how much importance you feel is attached to the Disability Clauses in life insurance policies. We use these letters in pointing out the importance of this kind of protection to others and a concrete case is more impressive than simply an imaginary one. I have letters from Dr. Felix J. Underwood, Dr. Van Alstine and Mr. W. G. Plummer of this city, all of whom have drawn disability. If you would hesitate to do this, feel that I will not think it amiss for you to state as unless you would be willing to have a letter used we would not wish to cause you any embarrassment in the matter.

Haven't received the statement from Dr. Currie as yet, but suppose it will come along in a few days. The monthly

payments will be made on the 13th of each month, for each completed month, as long as your disability lasts. So after all the 13th isn't such a bad day.

Read my motto on the bottom of the letterhead and if there is any service that I can render you just put me to the test. You are not working any hardship on me in securing any service that I can render—that is after all what Life Insurance is.

With best wishes, I am

Sincerely yours, W. Y. Guilbert, Special Agent.
WYG.

"Life Insurance is a Service not a Commodity."

EXHIBIT No. 3

July 6, 1931.

Mr. Roy T. Mobley, Lucedale, Mississippi.

Re Policy: 7,802,419, 10,340,538, Claim No. 64,183-B

DEAR SIR:

Referring to the above numbered policies, on your life, on which policies monthly disability income payments have [fol. 73] been made to June 13, 1931, inclusive, the Company has given your case most careful consideration, and we regret to have to advise you that we do not feel justified in allowing further benefits, inasmuch as it does not appear that you are any longer continuously totally disabled within the meaning of the Disability Benefit Provision contained in the policies.

In view of the circumstances, no further disability income payments will be made and the premiums due on and after July 2, 1931, have become payable in conformity with the terms of the contracts.

Yours truly, F. S. Lantry, Chairman.

EXHIBIT No. 4

Lucedale, Mississippi, July 11, 1931.

Mr. W. Y. Guilbert, c/o New York Life Ins. Co., Branch Office, Tower Building, Jackson, Mississippi.

DEAR MR. GUILBERT:

I have just received notice from the company that they were discontinuing payment of monthly benefits, and that no further premiums would be waived. This was not altogether a surprise to me as I discovered some time ago that their confidential reports were obtained through parties who knew nothing about my actual condition and made no effort to find out the facts.

I am as much disabled now as I have been at any time since I got up from the operation, and am therefore instructing my attorney, Mr. Barnett, of Jackson, to file suit against the company immediately.

[fol. 74] I have not been satisfied with the suspicious attitude in which the Company has dealt with my case, and its arbitrary action is cutting off my insurance, makes me feel justified in asking that you return my letter to you in which I set out the benefits of this insurance to me.

I do not care to recommend a Company which obtains its information in such a manner that a disabled policy holder must go about complaining about his disabilities to every Tom, Dick and Harry under the fear that otherwise he might be overheard by some spy of the Company, and have his efforts to keep himself in a healthy state of mind turned against him.

I am ready to return to work as soon as I feel able to do so, and in fact have made several attempts to work. I am also ready to return to work when my physicians advise me that it is safe for me to do so.

I fully appreciate your personal service to me in this matter, and upon return of my former letter, if it will benefit you, I will write you another acknowledging your valuable service and the benefit the insurance received had been to me, but without recommending the Company.

Very truly yours, —— ——.

EXHIBIT No. 5

Lucedale, Mississippi, July 14, 1931.

Mr. W. Y. Guilbert, Special Ag't, New York Life Ins. Co.,
Branch Office, Tower Building, Jackson, Mississippi.

DEAR MR. GUILBERT:

I did not ask you to help me in straightening out my insurance because I thought I had imposed upon you about as much as one policy-holder should. I shall, of course, [fol. 75] be glad to have you assist me, and will ask my attorney to withhold the suit until I hear further from you.

I expected Dr. Shands' malicious report to give me some trouble in securing my insurance. But once having settled the matter, I did not think the company would continue to deal with me in an attitude of suspicion, and jump at the first apparent excuse to discontinue my benefits.

There is nothing in my past that could lead the company to suspect that I was practicing a fraud on them. I did not plan to have appendicitis, and especially not the kind that I did have. My income for the past three years has averaged, monthly, at least three times the amount of my insurance. Other lawyers are getting my clients because I cannot look after my business. I have a wife and baby to take care of. My wife and I are both graduates of the University, and am not very much impressed with the huge income of $70.00 per month. I make these statements merely to show you why I resent the company's verbally kicking me out of the house with the insinuation that I am pretending to be disabled in order to draw my insurance. I seem to have misled you in regard to the kind of work I have tried to do. I have made only one attempt to do legal work since I became sick, and that was before I applied for insurance benefits. When Dr. Shands discharged me from his care in January, he advised me that I could return to work at the end of the month. Acting on this advice I attempted to return to work early in March, assisting Judge J. Morgan Stevens in briefing a case in which we were jointly interested. This work extended over a period of four or five days, and its result was that I was practically reconfined to my bed for more than a month, and I believe is partly responsible for my present condition.

This, of course, has nothing to do with my present condition.

[fol. 76] My reference was chiefly to efforts to do physical work about the place here. Light jobs by which I could test out my capacity without overstraining myself. My legal work has been confined to securing other lawyers to take over the work of my clients. If the company has any contrary information it is erroneous.

I have numerous symptoms of infirmities which I have not reported because my physician attributes them to my general condition. I am now taking treatment for my heart *with* Dr. Currie found to have a murmur when he examined it three weeks ago. I am also taking treatment for hemorrhoids which have developed since my operation. My chief trouble is nervous instability, which naturally I do not parade before the public because I expect to be able to return to the practice of my profession sometime in the near future.

Contrary to the apparent impression of the company, I am still acting under the advice of my physician, Dr. N. R. Currie, and my personal friend, Dr. E. A. Copeland; as well as my own knowledge of my condition. When these two men tell me that it is safe for me to return to work, I shall certainly make the effort to do so.

I have not refused to make any report, or submit to any examination requested by the company. I, of course, do not know what kind of reports the company's physician turned in, but, I do know what kind of an examination of me that he made. I am also informed that two of the secret reports which the company had made on my case were made by parties who did not know me and made no serious effort to find out the truth about my case.

As I do not know what caused the company to take this action, I am at a loss to suggest any means by which it might be remedied. If it has information that I have worked, I shall be glad to submit the facts; also, if it has an adverse medical report I shall be glad to furnish proof [fol. 77] that it is erroneous. It is for the company to specify how, and in what manner the proof shall be made, as long as it is reasonable and the information given true.

My only request is that, if the company will reconsider its action, it do so immediately, I understand the method used by the company is securing its information. I have

made hundreds of such reports for the Retail Credit Company of Atlanta. I know from experience that such reports do not justify a company's cutting off payments to a disabled policyholder, arbitrarily, without giving him an opportunity to prove the information erroneous.

I know that my policy does not cover temporary disability. But, disability which has lasted for more than seven months and is still indefinite can hardly be called temporary.

Having placed this matter back in your hands, I am counting upon you to secure the earliest possible action on the part of the company.

Sincerely yours, —— ——.

——

EXHIBIT No. 6

July 16th, 1931.

Mr. R. T. Mobley, Lucedale, Miss.

DEAR MR. MOBLEY:

Have just received yours of the 14th inst., and am immediately proceeding with your case. Have just made an effort to get in touch with Dr. Currie over 'phone, but find that he is out of his office. As soon as I can get in touch with him will secure a statement from him relative to your case; submitting his statement together with your letter to the company.

[fol. 78] As I stated to you I feel that as a client of mine you are entitled to the best services that I can render you. There is only one statement in your letter that I did not like, and that was contained in the first paragraph and was to the effect that you did not wish to impose on me. Please remove from you- mind any thought that you could impose on in this matter, any more than a client of yours would be imposing on you in asking that you give his case your best thought and attention. Life insurance is a service and not a commodity and when you take a policy through me or any other life insurance agent, the attitude of the agent should be that he has been retained by you to look after all matters arising in connection with this insurance of whatsoever nature they may be. This is the way I feel about it, and I want you to feel the same way.

I will keep you informed in the matter and should the Company desire further information will advise you as to its character; apd if possible for me to secure it, without troubling you, I will do so, and then tell you that it has been done.

Let's make up our minds not to worry over this matter, but take the steps necessary as they arise. Depend on it that I will do everything possible for you in the matter.

Very kindest regards, and best wishes, I am

Sincerely yours, W. Y. Guilbert, Special Agent.

WYG.

EXHIBIT No. 7

Memo to Mr. Mobley:

I am attaching hereto a copy of letter that I am writing the Cashier, which is self-explanatory.

You can rest assured that I will give this matter the most careful attention.

Best wishes,

W. Y. G.

[fol. 79] EXHIBIT No. 8

July 23rd, 1931.

Mr. C. E. Randall, Cashier, New York Life Insurance Co.,
Jackson, Miss.

In re Disability Claim—R. T. Mobley

DEAR MR. RANDALL:

It seems that for some reason the Company has discontinued monthly payments in the above case. For the Company's information I am attaching hereto a letter from Mr. Mobley with reference to his condition, also, a letter from Dr. N. R. Currie of this city; his attending physician.

I will appreciate it if you will forward this information to the Company by airmail in order that an immediate reconsideration of the case may be had.

Yours very truly, —— ——, Special Agent. WYG.

EXHIBIT No. 9

August 3rd, 1931.

Mr. W. Y. Guilbert, Office.

Re Pol. 10,340,538—Roy T. Mobley

DEAR MR. GILBERT:

We have just received the following letter from the Home Office relative to this case:

"Referring to your letter of July 23rd, 1931, with enclosures, please advise the insured that in view of the addi-
[fol. 80] tional particulars received, the Company will be pleased to give further consideration to his claim. Under even date we are writing direct to the Company's examiner, Dr. Huggins, for a report on Form No. 5."

(Signed) F. S. Lantry, Chairman.

Yours very truly, C. E. Randall, Cashier. EMR.

P. S. We would suggest that you bring the insured and Doctor together in order that the above form may be furnished.—C. E. R.

Memo: The above is self-explanatory. If you find that it is not convenient to make a trip to Jackson, would suggest that you write me and I will secure the name of the Company's examiner at Lucedale. Best wishes.

W. Y. (Billy) Guilbert.

EXHIBIT No. 10

August 27, 1931.

Mr. Roy T. Mobley, Lucedale, Mississippi.

Re: Pol. No. 10,340,358

DEAR SIR:

Referring to our telephone conversation of this morning, I am attaching hereto lien note for the full amount of the premium which was due August 7th. I believe you stated that you wished to use the dividends in connection with this
[fol. 81] premium, and I find that you have a credit of

$61.96 which leaves a balance of only $4.39 required to cover the premium.

If you do not wish to use the dividends, the note for $66.35 should be signed in ink and returned to this office before September 7th. However, if you wish to apply the dividends the attached voucher as well as the note for $4.39 should be signed and returned.

In the event that you do not wish to make a note for this small amount, you may forward check with the voucher and we will immediately mail you receipt for the premium.

Yours very truly, C. R. Randall, Cashier, by J. C. Williams. JCW:MMH.

EXHIBIT No. 11

Request to apply dividends left on deposit in reduction of premium and interest, if any.

——, 193-.

To New York Life Insurance Company, 51 Madison Ave., Madison-Square, New York, N. Y.

GENTLEMEN:

I hereby request that the sum of $61.96 from dividends left on deposit under Policy No. 10,340,535-S8 be used in reduction of the payment due Aug. 7, 1931.

(Please sign here) ——, Owner of Policy.

The amount of Dividends used has been indicated on the renewal Receipt.

——, Cashier.

[fol. 82] EXHIBIT No. 12

Premium Lien Note

$4.39. September 7, 1931.

The undersigned hereby jointly and severally promise to pay to the New York Life Insurance Company, at its Home Office, in the City of New York, the sum of Four and 39/100 dollars, with interest thereon as hereinafter stated, for

premium due on the 7th day of August, 1931, and to cover an existing note of $—— and interest thereon, on Policy No. 10,340,538 issued by said Company on the life of Roy T. Mobley.

This Premium Lien Note is given by the undersigned and accepted by said Company in lieu of cash for said premium, and is a lien against said policy and an indebtedness thereon.

The undersigned further agree as follows:

1. To pay said Company on the next anniversary of said policy, interest on said sum at the rate of six per cent per annum from this date to said anniversary, and annually thereafter on each anniversary of said policy. If interest is not paid on the date when due, it shall be added to the principal and bear interest at the same rate; and the undersigned agree to make and deliver to said Company at any time, and from time to time, such other and further note or notes, if any, as said Company may demand of them, for the purpose of giving effect to this paragraph.

2. Said indebtedness shall become due and payable either

(a) If there is default in the payment of any premium on said policy, in which event the sum so due and payable [fol. 83] with interest, shall, without demand or notice of any kind, every demand and notice being hereby waived, be deducted in the manner provided in said policy, and thereupon said indebtedness shall be deemed full paid and satisfied; or,

(b) On the maturity of said policy as a death claim or as an endowment, or on the surrender of said policy for a cash value before default in the payment of premium. In any such event the amount so due and payable shall be deducted from the sum to be paid or allowed under the policy; but

(c) The undersigned reserve the right to pay said indebtedness in cash at any time before it shall otherwise have been satisfied in accordance with the terms of said policy and this agreement.

3. Whenever the total indebtedness to the Company on said Policy, however evidenced, shall equal its cash Surrender Value then in the event of failure to pay interest

thereon, said Company shall mail to the last known address of the insured, and of the assignee of record at the Home Office of the Company, if any, a notice that the total indebtedness to the Company on said policy equals its Cash Surrender Value and thereupon said policy shall, one month after the mailing of said notice, and whenever said policy so becomes void and of no effect, all said indebtedness to the Company shall be deemed fully paid and satisfied.

Signature of the Beneficiary or Assignee, if any:

_____.

Signature of the person whose life is insured:

_____.

[fol. 84] EXHIBIT No. 13

Lucedale, Mississippi, September 25, 1931.

Mr. W. Y. Gilbert, % N. Y. L. I. Co.; Branch Office, Tower Building, Jackson, Mississippi.

DEAR MR. GUILBERT:

It is now three and one half months since the company stopped paying my disability benefits, and if you have not yet received a report on my claim, please transmit to the proper department my request for an immediate decision on my case.

If the company thinks it can defeat my claim, let them say so and we will see if they have anything to stand on, if not it is time that I received a little consideration.

The courtesy and attention which you and others in the Jackson office have given to my case makes it a little hard for me to express what I am compelled to think in regard to the treatment I have received by the company, but it is beginning to look like I am going to have to face the fact that the home office is determined to pursue a course which omits all consideration of our own welfare.

All the insurance I have is with the N. Y. L. I. Co., placed there, not because of the liberality or cheapness of its insurance, (which it certainly is not), but because I believed that the company did not constantly delay and harass its

policy holders in the payment of their claim, or in giving definite well founded decisions upon them. If the N. Y. L. I. Co., is going to degenerate into the class of these over-night health and accident companies, then I think it is about time our state took public notice of the matter.

I cannot wait longer than October 3d on this matter, A lawsuit will be expensive for us both and would cause me [fol. 85] to lose a large part of my insurance anyway, but it would settle the matter.

I will appreciate your bringing this request to the immediate attention of the company, as I cannot delay any longer.

With my best regards, I am

Sincerely yours, —— ——.

EXHIBIT No. 14

September 26th, 1931.

Mr. R. T. Mobley, Lucedale, Miss.

Re Pol. No. 10,340,538

DEAR MR. MOBLEY:

Your letter of September 25th, addressed to our representative, Mr. W. Y. Guilbert, has been referred to this office for attention.

I am indeed sorry, Mr. Mobley, that this matter has been delayed so long but feel certain that the Company is going to give you every consideration, and that you will receive every benefit to which you are entitled under the policy.

I am forwarding this letter to the Home Office this date, and I trust that you will defer any legal action until we can get a reply.

Yours very truly, C. E. Randall, Cashier. CER:-EMR.

Have asked for answer by wire by the 3rd.

[fol. 86] EXHIBIT No. 15

No. 123495

Waiver of Premium Statement

New York Life Insurance Company

51 Madison Avenue, Madison Square

New York, October 5, 1931.

To the Holder of Policy Number 7,802,419, R. T. Mobley:

On account of disability of the insured under the above numbered policy, the New York Life Insurance Company hereby waives payment of the semi-annual premium of $25.04 on said policy, falling due on the 2nd day of July, 1931, but without waiving or otherwise changing any of the terms of conditions of said policy.

This statement shall have no force or effect unless it is countersigned by the Registrar of the Company.

Countersigned by J. W. Baker, Registrar.

EXHIBIT No. 16

No. 123496

Waiver of Premium Statement

New York Life Insurance Company

51 Madison Avenue, Madison Square

New York, October 6, 1931.

To the Holder of Policy Number 10,340,538. R. T. Mobley:

On account of disability of the insured under the above-numbered policy, the New York Life Insurance Company [fol. 87] hereby waives semi-annual payments of the premium of $66.35 on said policy falling due on the 7th day of August, 1931, but without waiving or otherwise changing any of the terms or conditions of said policy.

This statement shall have no force or effect unless it is countersigned by the Registrar of the Company.

——— ———, President.

Countersigned by J. W. Baker, Registrar.

EXHIBIT No. 17

October 9th, 1931.

Mr. Roy T. Mobley, Lucedale, Miss.

Re Pol. 7,802,419-10,340,538

DEAR MR. MOBLEY:

We enclose to you statements waiving payment of semi-annual premium due July 2nd, 1931 under the former policy and waiving payment of semi-annual premium due August 7th, 1931 under the latter policy.

We also enclose Company's check No. 78077 issued to you for $24.04 in refund of the amount paid account of the premium under the former policy. Kindly return to this office the Company's official receipts which we sent to you.

We are writing our Home Office in New York City relative to the settlement of the premium under the latter policy by loan, and will advise you in due course relative to the same.

In the next few days we will forward to you check in settlement of disability income payments due you.

Yours very truly, E. M. Randall, Cashier. EMR.

[fol. 88] EXHIBIT No. 18

Oct. 12th, 1931.

Mr. Roy T. Mobley, Lucedale, Miss.

Re Pol. Nos. 7,802,419-10,340,538

DEAR FRIEND MOBLEY:

I am indeed glad to be able to enclose in this letter checks from the Company for $150.00, $70.00 and $60.00 which cover the disability payments from the date on which they were stopped to November, 13th, 1930.

I have appreciated your position in this matter, as you knew that you were entitled to the payments and I had the same feeling about it. I appreciated it, too, because it is hard enough for a man to battle to regain his health with circumstances ideal, without being bothered by other matters. However, as things stood, due to erroneous reports, it just took a little time to get the stream back into the main channel again.

Somehow things like these will come into a fellow's life once in a while and they carry a lesson with them, as in the end things work out alright. As they say "we never miss the water until the well runs dry" and as long as things are running aright we just take them as a matter of course and do not consider that we are fortunate. When the well runs dry then it is that we appreciate the water.

Please rest assured of the fact that it is my desire to serve you at any time that the occasion arises and that I endeavor at all times to get myself attune- to the feeling of the fellow that I am seeking to serve and feel with him the things that he feels, so that I may thus be the better [fol. 89] enabled to serve him as I, to some degree, have a sympathetic feeling born of understanding.

Well, I guess the old sun looks brighter today, the flowers more beautiful and it isn't so hard to smile, so again I feel with you the pleasure of things being righted again, and rejoice with you—so after all life isn't such a common thing after all.

With best wishes, I am

Sincerely yours, W. Y. Guilbert, Special Agent.

Exhibit No. 19

October 31, 1931.

Mr. Roy T. Mobley, Lucedale, Mississippi.

Re Pol. No. 10,340,538

Dear Sir:

The premium which was due August 7th on your above policy was originally paid by lien note, but as you know, it has now been waived, and we are therefore returning the

note properly canceled, leaving the policy free of indebtedness.

Yours very truly, C. E. Randall, Cashier. JCW: MMH.

[fol. 90] EXHIBIT No. 20

Please return this notice with your remittance

New York Life Insurance Company,

Home Office, 51 Madison Avenue, Madison Square,

New York, N. Y.

Hereby gives notice that a payment will be due as specified below provided the policy is then in force.

Amount Due, Premium $66.35.
Policy Number 10,340,538-S8.
Date due, 7 Day of Feb., Year 1932.
Interest on Loan or Note, ——.
Roy T. Mobley, Box 369, Jackson, Miss.
JAC.

Payment must be made to the cashier of the Company's Jackson Branch Office, Jackson Tower Bldg., 127 Roach St., Jackson, Miss., or to the premium cashier at the home office.

Office Hours: 9 A. M. to 4 P. M. Saturday only: 9 A. M. to 12 P. M.

Unless said payment shall be made to the company or to the duly appointed agent or person authorized to collect it by or before the date it falls due, said policy and all payments thereon will become forfeited and void except that [fol. 91] this notice shall not affect either the period of grace, or the right to non-forfeiture benefits, if provided for in the policy or by statute.

Make payments only in exchange for the company's official premium receipt signed by the president and countersigned by the person to whom payment is made. Remittances may be made by bank draft, check, post office or express money order payable to the order of New York Life Insurance Company, at par at New York or at the place of payment indicated on the face of this notice.

Please notify in writing the office to which you pay your premiums of any error or change in your post-office address, giving the number of each policy you hold.

Thomas A. Buckner, President.

3472-N. March 1931.

EXHIBIT No. 21

New York Life Insurance Company,

Home Office, 51 Madison Avenue, Madison Square,

New York, N. Y.

Mar. 3, 193-.

Reminds you that to this date, ———, the payment specified below has not been received by this company.

Amount due, Premium $66.35.
Policy Number 10,340,538-S8.
Date due, 7 Day of Feb., Year 1933.
Interest on Loan or note, ——.
Roy T. Mobley 927 Inge St., Jackson, Lucedale, Miss.
[fol. 92] Grace expires Mar. 10, 1933.

This policy will lapse unless the premium is paid within the period of grace provided in the policy for paying premiums.

Cashier, Jackson Branch Office, Jackson Tower Bldg., 127 Roach St., Jackson, Miss.

Office Hours: 9 A. M. to 4 P. M. Saturdays: 9 A. M. to 12 M. only.

Make payment only in exchange for the company's official receipt signed by the president, countersigned by the person to whom payment is made. Make remittance payable to New York Life Insurance Company.

3472—Remind. March 1931.

EXHIBIT No. 22

New York Life Insurance Company,
51 Madison Avenue, Madison Square,
New York, N. Y.

Committee on Disability Claims

John C. McCall, Vice-President,
Crank S. Lantry, Chairman,
J. N. Bell, Vice-Chairman.

March 19, 1932.

Mr. Roy T. Mobley, 535 Valley Street, Jackson, Miss.

Re Policy; 7,802,419, 10,340,538, Claim No. 64,183-B

DEAR SIR:

Referring to the above numbered policies, on your life, on which policies monthly disability income payments have [fol. 93] been made to February 13, 1932, inclusive, it appears to the Company, from information recently received, that you are no longer continuously totally disabled within the meaning of the Disability Benefit Provision contained in the policies.

In view of this condition, we regret we find it necessary to say that no further monthly disability income payments will be made and the premiums hereafter due become payable in conformity with the terms of the contracts.

Yours truly, F. S. Lantry, Chairman.

EXHIBIT No. 23

April 20th, 1932.

Mr. Roy T. Mobley, 535 Valley St., Jackson, Miss.

Re Claim No. 64,183-B, Pol. 7,802,419-10,340,538

DEAR SIR:

We have received for attention from the Company's Branch Office in Jackson, Miss., your communication of April 4th, 1932, and in view of your contention that you

are still totally disabled, we will be pleased to give further consideration to your claim.

We are arranging to have another of the Company's Medical Examiners call upon, and in the meantime should like to receive a detailed statement regarding your condition from Dr. J. E. Beck to whom you refer in your communication.

Yours truly, F. S. Lantry, Chairman. B. CB:SN.

[fol. 94] EXHIBIT No. 24

April 7th, 1932.

Mr. Roy T. Mobley, Lucedale, Miss.

Re Pol. No. 10,340,538

DEAR SIR:

This will acknowledge receipt of your letter of April 4th, and I am very sorry we have had so much difficulty with your claim. I am sending your letter on to New York today, asking for a reconsideration of the claim, and will advise you promptly upon receipt of a reply.

Yours very truly, C. C. Randall, Cashier. CER: EMR.

EXHIBIT No. 25

May 18th, 1932.

Mr. Roy T. Mobley, Lucedale, Miss.

Re Pol. No. 10,340,538

DEAR SIR:

We have received your letter of the 16th instant, and have noted its contents.

We are this date referring your letter to our Home Office in New York City for the attention since they pass on all disability claims.

Yours very truly, C. E. Randall, Cashier. R. EMR.

[fol. 95] EXHIBIT No. 26

R. T. Mobley, 927 Inge Street, Jackson, Mississippi

December 22, 1932.

New York Life Ins. Co., Jackson, Mississippi, Tower Building.

Re. Pols. 7,802,419 et al. Disability Benefit Dec. 13, 1932

GENTLEMEN:

Unless I receive some word from the Company as to why my disability benefit which became due on December 13, 1932, has not been paid; I shall be compelled to act as if the Company had denied further liability. If your company is delaying until they can get a report from their nine hundred and ninety-ninth detective, they could at least tell me that they are holding it up pending further investigation. I must have some word about this before December 27.

Very truly yours, R. T. Mobley, 927 Inge Street, Jackson, Mississippi.

[fol. 96] EXHIBIT No. 27

Dec. 27, 1932.

Mr. R. T. Mobley, 927 Inge Street, Jackson, Mississippi.

Re Pols. No. 7,802,419-10,340,536, Claim No. 64,183-B

DEAR SIR:

In reply to your letter dated December 17, 1932, we wish to advise that the Company has approved payment of the disability income payments under the above numbered policies, due as of December 13, 1932. In all probability by the time you receive this letter, you will have received checks in payment of these items.

Yours very truly, Frank S. Lantry, Jr., Chairman.

EXHIBIT No. 28

January 19, 1933.

Mr. Roy T. Mobley, Lucedale, Miss.

Re Claim No. 64,183-B, Pol. No. 10,340,538, etc.

DEAR SIR:

The Company is taking up the question of continuance of total disability for the purpose of considering making payment of monthly disability income due February 13, 1933. [fol. 97] We request that you kindly answer the questions on the enclosed Form No. 3a, application for continuance of benefits, have same duly attested before a Notary Public and forward as promptly as possible to this office.

Yours very truly, Frank S. Lantry, Chairman. C.C.

CC. Enc.

EXHIBIT No. 29

6014-A—Sept. 1932. Form No. 3-A.
Printed by New York Life Ins. Co., New York City.

Insured's Statement 1. No. 64,183-B

Application to New York Life Insurance Company for Continuance of Disability Benefits under Policy No. —

1. Full name of insured. Roy T. Mobley.

2. Have you resumed working? No.

3. If not, are you prevented from working solely because of bodily injury or disease? (State facts briefly). Yes.

4. Have you attempted to do any work since your disability began? (If so, state facts.) No.

5. Are you confined to bed? Partially.

6. Are you confined to the house, a hospital, or a sanitorium? (If so, state which and how long confined). My condition keeps me in the house most of the time.

[fol. 98] 7. To what extent are you able to be out of doors? No definite period.

8. Describe your daily activities briefly. Get up. 10 A. M. to Noon, sit in chair or lie on day bed, reading, listening to radio, or doing nothing until bed time 10 P. M., eat noon and 6 P. M., go out when absolutely necessary. Occasionally take short walk or ride in late afternoon for health, sleep fitfully.

9. If not working, when do you expect to resume work? See back.

10. How often is it necessary for you to consult a physician? As often as I can afford.

11. When did you last consult a physician? (Give name and address of last physician consulted.) Dr. J. E. Beck, Mobile, Ala., in Nov., 1932.

12. From what companies or associations are you now receiving disability benefits?) State amount of benefits received monthly from each). Only New York Life — $70 per month.

13. Has any company or association discontinued payments of benefits? One month you cut me off and the next you suspend my benefits.

Signature of Insured—Roy T. Mobley. Present Address—927 Inge Street, Jackson, Mississippi.

Sworn to before me this 24th day of January, 1933.

———, Notary Public.

Please use the other side of this form to give any further information you think the company should have.

[fol. 99] I have been disabled for more than two years without any noticeable improvement in my condition. I no longer entertain any hope of being able to return to active practice of the law. Whenever I attempt any kind of exercise, mental or physical, there is an immediate and rapid deterioration of my physical and nervous system. My doctors have advised me take as much exercise as I feel able to do, but as yet I have been unable to find any kind of exercise which I could repeat each day without injury to myself.

My problem is a two-fold one of first rebuilding my health to the point where I can do a sufficient amount of

physical exercise regularly and second to find some means of livelihood which will require a minimum of physical action, and which at the same time will not overstrain my nervous system.

I am doing the best I can to rehabilitate myself, and would appreciate it if you would spend some time trying to help me do so, rather than worrying me with a constant stream of investigators.

Roy T. Mobley.

EXHIBIT No. 30

Copy

Lucedale, Miss., Feb. 22, 1933.

New York Life Insurance Co., 51 Madison Ave., Madison Square, New York, N. Y.

Re Pols: 7802419-10340538

GENTLEMEN:

As you have had ample time to complete your investigation of my continued disability, I must ask you to please [fol. 100] send me a check for the February 13th installment. Your methods of harassing me about these benefits are a constant hindrance to the treatment of my disability.

Very truly yours, Roy T. Mobley, Lucedale, Mississippi.

EXHIBIT No. 31

Copy

Lucedale, Mississippi, Feb. 28, 1933.

New York Life Insurance Co., 51 Madison Ave., Madison Sq., New York City, N. Y.

In Re Disability Benefits

GENTLEMEN:

Unless I receive a check by return mail for the February 13th installment of my disability benefits, I shall be com-

pelled to act on the assumption that you are denying liability for same. I shall accept your continued silence as confirming such a view of the matter.

Very truly yours, R. T. Mobley, Lucedale, Mississippi.

[fol. 101] EXHIBIT No. 32

Copy

Lucedale, Mississippi, Mar. 6, 1933.

New York Life Ins. Co., 51 Madison Ave., Madison Sq., New York City, N. Y.

Re Pols. 10340538, etc.

GENTLEMEN:

I am taking legal steps, immediately, to secure my benefits under the above policies.

Very truly yours, Roy T. Mobley.

EXHIBIT No. 33

New York Life Insurance Company,

51 Madison Avenue, Madison Square,

New York, N. Y.

Date: April 13, 1933. Branch Office at Jackson, Miss. Policy 10,340,538.

Mr. Roy T. Mobley, Lucedale, Miss.

DEAR SIR:

Your above numbered policy has lapsed for the non-payment of premium. The Company urges you on receipt of this letter to apply for the reinstatement of the policy. Please complete this Application for Reinstatement printed on the back and have your signature duly witnessed.

[fol. 102] Return the application to me together with $66.35 and 6% interest thereon from the 7th day of February, 1933.

In order to protect your own interests I trust you will give this matter your prompt attention.

Very truly yours, C. W. Cherry, Cashier.

The interest up to April 20th will amount to 78c. Please include this interest in your remittance.

P. S.—The attached form No. 224 D (over) is to be executed without expense to the Company by one of the following: J. A. Dorsett and J. W. Horn.

Lmb.

Application to the New York Life Insurance Company

Home Office: 51 Madison Avenue, Madison Square,

New York, N. Y.

For Reinstatement of Policy No. ——, Amount, $——.

I hereby apply for the reinstatement of the above numbered policy which lapsed for non-payment of premium due on the — day of ——, 19—, and, for the purpose of inducing the Company to reinstate said Policy, I make the representations contained in the following questions:

Complete and Sign in Ink.

1. Are you now, to the best of your knowledge and belief, in the same condition of health as you were when the policy was issued: (If not, give details.) Ans.

[fol. 103] 2. Within the past two years have you had any illness, diseases or bodily injuries or have you consulted or been treated by any physician or physicians? (If so, give full details, including nature, date, and duration of each illness, disease or injury, the name of, each physician, and the dates of and reasons for consultation or treatment.) Ans.

3. Has any Company or Insurer, within the Past two years, examined you either on, or in anticipation of, an application for life insurance, or for the reinstatement of life insurance without issuing or reinstating such insurance? (If so, give name of each Company or Insurer.) Ans.

If the evidence of my insurability is satisfactory to the Company and it has received all sums the Policy requires to be paid for reinstatement, then, and not until then, said Policy shall be deemed reinstated. If said policy is not so reinstated, I agree to accept return of all sums paid in connection with this application, without interest.

I hereby certify that the foregoing answers are full, complete and true, and agree that the Company believing them to be true shall rely and act thereon.

Dated at —— this — day of ——, 19—.

Signature of insured: —— ——.

My Post-Office Address is: ——.

Witness: ——. Address: ——.

This space for cashier's "Date Received Stamp".

Approved by —— ——, Cashier, on the — day of ——, 19—.

o 4778. March 1932. Printed by New York Life Ins. Co., New York City.

[fol. 104] IN UNITED STATES DISTRICT COURT FOR THE SOUTHERN DIVISION OF THE SOUTHERN DISTRICT OF MISSISSIPPI

Law. No. 1001

ROY T. MOBLEY, Plaintiff,

vs.

NEW YORK LIFE INSURANCE COMPANY, Defendant

Bill of Exceptions—Filed May 10, 1934

Be it remembered, that on the 22nd day of February, 1934, said date being one of the days of the regular February term of said Court of the year aforesaid, and by consent of the parties, the two cases having been consolidated for trial, the plaintiff to maintain the issues in his behalf, this cause coming on for trial before Honorable Edwin R. Holmes, Judge of said Court, and the jury impaneled therein, the following proceedings were had, to-wit:

DR. J. E. BECK, witness for the plaintiff, first being sworn, testified as follows:

I live in Mobile, Alabama, and practice medicine and surgery and have been engaged in this profession for twenty years and am duly licensed to practice medicine in three States. I have known Roy T. Mobley for a little over two years and saw him just a few minutes ago. The last time I saw him before this occasion was in April, 1933.

Q. Dr. Beck, when you saw him in April, 1933, I will ask you to state whether or not, in your opinion, he was totally disabled from performing any work?

(Defendant objected to this question, stating: "We have an agreement, and we agreed in open court that up to [fol. 105] date he is totally and permanently disabled within the meaning of the policy so as to entitle him to the benefits."

By Mr. Mize: That is correct

Q. You say you saw him today?
A. Yes, sir.
Q. I will ask you to state, in your opinion, whether or not he is totally and permanently disabled?
A. I consider him so.

By the Court: I thought he agreed to that.
By Mr. Mize: In the future, I am talking about.
By the Court: I understood you to say permanently.
By Mr. Watkins: Totally and permanently up to this date, but we have not agreed that he will not get well. That is not relevant now, because we admit liability.
By Mr. Mize: That brings on the question which is before the Court, and I have a decision squarely to the point if your Honor wants to hear it at this time.
By the Court: I think the testimony is competent, unless it is agreed that he is permanently disabled.
By Mr. Watkins: We have agreed that he is totally and permanently disabled within the meaning of the policy, but [fol. 106] we don't concede that the permanency is—that is, to leave out the future.
Objection overruled by the Court.

I consider that he is totally and permanently disabled from ever being able to engage in any work that he shall

carry on as a lawyer. He is suffering from myocarditis and indocarditis and the treatment of the above is rest, and if he is enabled to be relieved of worries from a financial standpoint and receive complete rest it will prolong for a greater length of time his life.

(Defendant objected to the testimony in regard to the future disability of the plaintiff because it is not relevant to this insurance, and the objection was overruled,) Defendant excepted.

The plaintiff was suffering from myocarditis which is a degeneration of the heart muscle, being a heart trouble. Angina pectoris and myocarditis are frequently associated, but angina pectoris is not a disease, it is only a symptom. Myocarditis is a trouble that angina pectoris is a symptom of. I believe I operated on him for Appendicitis in December, 1930, my record will show that. The condition I find him in now has no connection with his appendicitis operation. It is entirely different trouble. I examined him a few minutes ago and he has myocarditis. This is shown by taking the blood pressure. I noticed no other trouble with him. He is apparently thinner. I don't know what he weighed before and don't know what he weighs now, but apparently he is thinner. I read his blood pressure just a few minutes ago and it was 108 over 78, then I read [fol. 107] it again and it was 100 over 80 making a pulse pressure of 20 when it should have been a pulse pressure of 50.

Thereupon the plaintiff next offered an agreed statement of facts which were made subject to certain objections and exceptions as to relevancy and competency and before reading the agreed statement of facts Mr. Watkins on behalf of the defendant made the following objections to the introduction of the letters contained in the agreed statement of facts in the following language:

"Plaintiff alleges in his declaration that the breach occurred subsequent to January 13, 1933. He doesn't allege any breach prior to January 13, 1933. On the other hand, he alleges that the defendant paid him all amounts of money coming to him up to and including January 13, 1933, but that the defendant, in March following that, repudiated that or breached the contract by announcing that no further

sums would be paid. We pleaded to that, and the plaintiff comes back and calls attention to the fact that upon three occasions prior to that time we discontinued payments, and we claim that is a departure from the declaration, that the only breach set out is that following January 13, 1933, and no evidence of a further breach should be admitted. Move to exclude it.

By Mr. Mize: To our declaration he filed a special plea in which he set up that the company was acting in good faith, and had received reports that they believed to be true that he could go back to work, and that they kept an open mind even up to the last minute, and that they therefore had not breached the contract, but had simply sus- [fol. 108] pended the payments thereon, and to that replication we filed—to that special plea we filed a replication in which we denied that they were acting in good faith; denied that they received any reports upon which they were justified in acting, and denied that they kept an open mind. Set letters out in the replication to that. Those are the letters he is objecting to and the theory on which we say it is competent to show they were not keeping an open mind."

The agreed statement of facts were then read to the Court and the jury as follows:

AGREED STATEMENT OF FACTS

"In order to minimize the record and dispense, so far as possible, with the introduction of oral evidence in the case, subject to objections for incompetency, immateriality and irrelevancy, the plaintiff and the defendant, for the purpose of this trial only, stipulate that the following facts are true and correct:

(1) That the New York Life Insurance Company is a corporation, organized under the laws of the State of New York, domiciled in the city of New York, State of New York.

That it issued to the plaintiff the two policies of life insurance described in the declarations in the above entitled causes, to-wit: Policy No. 7,802,419, and subsequent thereto Policy No. 10,340,538, reference to which is now made.

That all premiums upon said policies maturing up to January 1, 1931, were paid by the assured.

That on or about the 6th day of April, 1931, the defendant received at its Home Office, through its Branch Agency at Jackson, Mississippi, a letter from the plaintiff, dated [fol. 109] March 31, 1931, in words and figures as follows:

"Jackson, Miss., March 30, 1931.

Mr. W. Y. Guilbert, % New York Life Ins. Co., Jackson Branch Office, Jackson, Mississippi.

DEAR MR. GUILBERT:

I was on the point of writing the Company about my case when your letter arrived. I have not moved from Jackson, but am here at Lucedale trying to recover my health. The facts about my case are as follows:

I retired Saturday night of December 13, 1930, with a light constant pain ranging generally over my abdomen. I was unable to sleep that night, and the next morning as the pain had increased, I remained in bed and called in Dr. N. R. Currie. Dr. Currie treated me for the pain and came out to the house to see me during that day and the next. Monday afternoon, December 15, 1930, the pain began to settle in my right side and about 10 o'clock that night became so acute I was carried to the Baptist Hospital. Dr. Shands operated on me shortly after I reached the hospital and found a very bad appendix, gangrenous and about ready to rupture. I remained in the hospital about fifteen days and was then carried to my apartment, 1283 N. Congress St., where I was confined to my bed until January 25, 1931. As soon as I had been up long enough to withstand the trip, I came on down to Lucedale hoping that the warmer climate and quiet would enable me to [fol. 110] quickly recover. I made no report of my operation to the Company as I had no idea that my disability would continue longer than two or two and one-half months.

My system seems to have been so poisoned by the infection however, that I seem to make very little progress toward recovery. Soreness persists through my side and back, where I understand the appendix had attached itself to my back, and there is still a kind of paralysis of the wall of my abdomen where the drain tube was placed. Anything except the slightest mental or physical exercise, at

the present time, quickly exhausts me and causes an aggravation of the soreness in my side which lasts several days.

I closed my office before leaving Jackson and have been compelled to place my practice in the hands of other attorneys.

The date of my recovery now seems to be so indefinite that I feel compelled to ask for the benefits under my policies with the Company, and assure you that I will appreciate your attending to the matter for me. I have two policies; One $5,000. No. 10,340,538, and the other $2,000 No. 7,802,419. Both carry disability benefits.

You can get in touch with my doctors by calling Dr. N. R. Currie at his office in the Standard Life Building, and Dr. H. R. Shands at his office in the Lamar Life Building.

Until further notice, address me at Lucedale, Mississippi.

Sincerely thanking you for your offer to assist me in this matter I am

Very truly yours, (Signed) R. T. Mobley."

That accompanying said plaintiff's letter above set out was a statement executed by R. T. Mobley, the plaintiff to W. Y. Guilbert, in the defendant's branch Agency at Jack-
[fol. 111] son, Mississippi, said statement being in words and figures as follows:

New York Life Insurance Company

Darwin P. Kingsley, President,

Jackson Branch Office

March 31st, 1931.

Mr. W. Y. Guilbert, Office.

Re R. T. Mobley

DEAR MR. GUILBERT:

We are in receipt of letter from the above insured in which he makes application for disability benefits.

In order that this matter may be given our attention, kindly have the insured answer the questions on the bottom of this letter and return to us.

Yours very truly, (Signed) C. E. Randall, Cashier.

CER: EMR.

1. Number of policies.

2. Full name—Roy T. Mobley.

3. Present address—Lucedale, Mississippi.

4. Previous residence address—1283 N. Congress, Jackson, Miss.

5. Occupation when disability began—Lawyer.

[fol. 112] 6. Employer's name and address when disability began—Self.

7. Previous occupation—Lawyer—Student.

8. Previous employer's name and address—Code Commission, J. Morgan Stevens, Chairman, Jackson, Miss.

9. Cause of disability—Appendicitis.

10. Date disability commenced—December 13, 1930.

11. Names of attending physicians, address, date first consulted.

Dr. N. R. Currie, Standard Life Bldg., Jackson, Miss. Dec. 14, 1930.

Dr. H. R. Shands, Lamar Life Bldg., Jackson, Miss. Dec. 15, 1930.

The above is true and correct information to the best of my knowledge.

(Signed) R. T. Mobley, Insured, Lucedale, Mississippi.

The defendant furnished to the plaintiff blanks to enable the plaintiff to submit to the defendant proof of his alleged disability claim; that the plaintiff's proof consisted of a statement of Dr. H. R. Shands, of Jackson, Mississippi, and Dr. N. R. Currie, of Jackson, Mississippi, under date of April 13, 1931, together with the plaintiff's statement dated April 9, 1931, which three statements together were re- [fol. 113] ceived by the defendant at its home office on April 15, 1931, and are in words and figures as follows:

Form No. 2

New York Life Insurance Company, 51 Madison Avenue, Madison Square, New York, N. Y.

Attending Physician's Report on Claim for Disability Benefits

(To be furnished without expense to the Company.)

1. Name of Insured: Roy T. Mobley.

2. Residence: Jackson, Miss.

3. Is Insured now under your treatment? No.

4. Date of first consultation in present disability? Dec. 15, 1930.

5. History given you at that time? Acute appendicitis—former stomach trouble.

(a) Date of onset of present disability? Dec. 13, 1930.

(b) Predisposing cause, if any, of present disability? Don't know, acute, gangrenous appendicitis.

(c) Names and addresses of any physicians previously consulted by insured—Dr. N. R. Currie, Jackson, Miss.

6. If you were consulted for any cause prior to the present disability, give dates and details of such consultations or treatments. Not consulted.

[fol. 114] 7. Diagnosis and symptoms of disease, infirmity, or injury causing disability. Acute gangrenous appendicitis—appendix removed.

8. (a) Is the insured in your opinion wholly disabled and prevented from engaging in any occupation whatsoever for remuneration or profit? No—not from appendicitis alone. Have not treated him for anything else.

(b) If he is, from what dates, to your knowledge, has he been so prevented?—

9. Give your opinion as to whether or not the insured will be permanently, continuously and wholly prevented for life from pursuing any and all gainful occupations, by rea-

son of this disability? Have only treated him for the appendicitis operation.

Signature: H. R. Shands. Post Office Address: Jackson, Miss.

Dated 4-13-31.

Form No. 2

New York Life Insurance Company, 51 Madison Avenue, Madison Square, New York, N. Y.

Attending Physician's Report on Claim for Disability Benefits

(To be furnished without expense to the Company.)

1. Name of Insured: Roy T. Mobley.

2. Residence: Lucedale, Miss.

3. Is insured now under your treatment? Yes.

[fol. 115] 4. Date of first consultation present disability? Dec. 14, 1930.

5. History given you at that time? Severe pains—right side abdomen.

(a) Date of onset of present disability? Dec. 13, 1930.

(b) Predisposing cause, if any, of present disability. ——.

(c) Name and addresses of any physicians previously consulted by insured. None for appendicitis.

6. If you were consulted for any cause prior to the present disability, give dates and details of such consultations of treatments. No.

7. Diagnosis and symptoms of disease, infirmity or injury causing disability. Acute appendicitis, gangrenous & ruptured.

8. (a) Is the insured in your opinion wholly disabled and prevented from engaging in any occupation whatsoever for remuneration or profit? Yes.

(b) If he is, from what date to your knowledge, has he been so prevented? 12-14-1930.

9. Give your opinion as to whether or not the insured will be permanently, continuously and wholly prevented for

life from pursuing any and all gainful occupations by reason of this disability? Indefinite.

[fol. 116] Signature: N. R. Currie. Post Office Address: Jackson, Miss.

Dated 4-13-1931.

Form No. 1

Claims for Disability Benefits

New York Life Insurance Company,

51 Madison Avenue, Madison Square,

New York, N. Y.

1. No. of policy	Date of policy	Amount
7,802,419	(In hands of assignee 1925 or 1926).	$2,000.00
10,340,538	August 7, 1928	5,000.00

2. Give name in full: Roy Thurston Mobley.

3. Date of birth: June 3, 1902. Place of Birth: Utica, Miss.

4. In what other companies and for what amounts are you insured under policies providing for disability benefits or health benefits. None.

5. Permanent residence: Jackson, Mississippi.

6. Where can you be called on in person now? Lucedale, Mississippi.

7. (a) Occupation at time disability began. Lawyer.

(b) Business address: 1014 New Merchants Bank Building, Jackson, Miss.

8. (a) Are you wholly disabled at the present time? Yes.

(b) State cause of disability? Appendicitis.

[fol. 117] 9. (a) On what date did this illness begin that led up — the present disability and what was the nature of the illness? December 13, 1930, Pain in abdomen.

(b) Give name and address of the first physician consulted at the beginning of that illness. Dr. N. R. Currie, Standard Life Building, Jackson, Mississippi.

(c) State date on which you first consulted that physician? December 14, 1930, about 8 A. M.

(d) Give names of all other physicians consulted and date of such consultations. Dr. H. R. Shands, continuously from Dec. 15, 1930, until about Feb. 1, 1931.

10. From what date has your disability prevented you from engaging in any occupation whatsoever for remuneration or profit. December 13, 1930.

11. I expressly waive on behalf of myself and of any person who shall have or claim any interest in the above numbered policy, all provision of law forbidding any physician or any other person who has heretofore attended or examined me, from disclosing any knowledge or information which he thereby acquired.

Insured's Signature: Roy Thurston Mobley.

Dated at Lucedale, Miss., Apr. 9, 1931.

That under date of April 15th, 1931, the defendant, through its Branch Agency, in Jackson, Mississippi secured the plaintiff to be examined by one of its medical examiners, Dr. J. C. Huggins, who was a competent and reputable physician; that Dr. Huggins' examination dated April 15, [fol. 118] 1931, was received by the defendant at its home office April 18, 1931, and is in words and figures as follows:

Form No. 5

New York Life Insurance Company

Medical Examiner's Report on Claim for Disability Benefits

1. (a) Name of Insured: Roy T. Mobley.

(b) Approximately: Age, 29; Height, 5-8; Weight, 152; Color of Hair, Brown; Color of Eyes, Blue.

2. Residence: Lucedale, Miss.

3. How well do you know Insured? Several years.

4. What is the nature of the injury, infirmity of disease of the insured for which disability is claimed? Attack of appendicitis, 13th of Dec., 1030—operated Dec. 15th—confined to bed until 24th Dec. Had drainage tube in side for several weeks.

5. (a) What was the condition of health of the insured for the year preceding the date of the present disability? Sluggishness—but in good health.

(b) When did the illness begin which led up to the Insured's present disability? Dec. 13th, 1930.

(c) When did insured first consult a physician in connection therewith? Dec. 14th, 1930.

(d) From what date has he been prevented by reason of his disability from engaging in any occupation whatsoever for remuneration or profit? Dec. 13th, 1930, to April 14th, 1931.

[fol. 119] (e) Give full particulars and the name and addresses of all physicians consulted? Dr. N. R. Currie, Jackson, Miss., Dr. H. R. Shands, Jackson, Miss.

6. Give your opinion as to whether or not the insured will be permanently, continuously and wholly prevented thereby for life from pursuing any and all gainful occupations by reason of his disability? Do not think he will be permanently disabled—as his strength is improving—probably be 60 days before he can resume occupation.

7. After careful examination to what extent do you find insured disabled, and due to what cause? Able to be up and about since Jan. 24th—walks with stick. His physician Dr. N. R. Currie advised rest for about 12 months. My opinion is that this man has had a stormy time with a ruptured appendix and of course still has some weakness and soreness in physical exercise, but he is able to be up and about, recuperating from this severe toxemia. Probably be able to resume his duties in about sixty days.

Signature: J. C. Huggins, Md.

Dated 4-15-31.

The proof submitted by the plaintiff to the defendant of his said disability being satisfactory to the defendant, between April 18, 1931, and April 25, 1931, the defendant determined that the plaintiff was totally and permanently disabled within the meaning of the policies sued upon (but defendant does not admit that the proof was conclusive as to the permanency of such disability), and allowed the disability claim to the plaintiff under said policies, and each of them, with a waiver of premium maturing January 15, 1931, on the first policy; that a copy of the memorandum [fol. 120] furnished by the defendant to its Branch Agency at Jackson, Mississippi, is attached hereto marked No. "1", and that said memorandum is as follows:

New York Life Insurance Company

Committee on Disability Claims

Jackson MFA Branch Office

New York, April 25, 1931.

Re Disability Benefits, Policies Nos. 7,802,419-10,340,538, Mobley, Cl. No. 64,183-B

1. Statement is enclosed waiving payments of premium due Jan. 9, 1931, and Feb. 7, 1931, resp.

7. Monthly disability income payments have been approved beginning with the payment due January 13, 1931.

Whereupon, on April 29th, 1931, W. Y. Guilbert, defendant's Special Agent at its Jackson Branch Agency, wrote to the plaintiff that certain letter made Exhibit 1 to the plaintiff's replication in cause No. 998, which is in words and figures as follows:

"April 29th, 1931.

Mr. Roy T. Mobley, Lucedale, Miss.

Re Pol. Nos. 7,802,419-10,340,538—Mobley

DEAR SIR:

I am enclosing two letters just received by me from the Branch Office, also check for $25.04 and two waiver of [fol. 121] premium receipts. Please Return the Receipts To Me, that were given you at the time the premium refunded was paid also the one sent you when the lien note was executed, as there are to be replaced by the waiver of premium receipts.

The check covering the monthly installments will be received in the next few days from the home office at which time I will mail to you promptly.

The statement No. 4 called for is to be executed by the present attending physician, so that the Company may determine whether or not to continue the monthly payments, after the first check is sent to you.

If I can be of any further service to you, please command me.

Sincerely yours, W. Y. Guilbert, Special Agent. WYG.
"Life Insurance is a Service, Not a Commodity."

That upon May 3, 1931, the said Guilbert, defendant's Special Agent, wrote to the plaintiff for and on behalf of the defendant that certain letter made Exhibit 2 to the plaintiff's said replication in said cause, which is in words and figures as follows:

May 3rd, 1931.

Mr. R. T. Mobley, Lucedale, Miss.

Re Pol. Nos. 7,802,419-10,340,538

DEAR MR. MOBLEY:

Received your letter of the 30th enclosing receipts. The note will be marked canceled and the dividend will be credited [fol. 122] back to the policy, and can either be left with the Company or withdrawn by you in cash, should you wish to do so.

I have just received check for $80.00 covering four months, under Number 7,802,419, and check for $200.00 covering the same period on policy No. 10,340,538. The checks are enclosed, with letters from the Company stating the period covered.

If you wish to do so, I would appreciate a letter from you giving your impression of the treatment given you by the New York Life and just how much importance you feel is attached to the disability clauses in life insurance policies. We use these letters in pointing out the importance of this kind of protection to others and a concrete case is more impressive than simply an imaginary one. I have letters from Dr. Felix J. Underwood, Dr. Van Alstine and Mr. W. G. Plummer of this City all of whom have drawn disability. If you would hesitate to do this, feel that I will not think it amiss for you to state as unless you would be willing to have a letter used we would not wish to cause you any embarrassment in the matter.

Haven't received the statement from Dr. Currie as yet, but suppose it will come along in a few days. The monthly payments will be made on the 13th of each month, for each

completed month as long as your disability lasts. So after all the 13th isn't such a bad day.

Read my motto on the bottom of the letter-head, and if there is any service that I can render you just put me to the test. You are not working any hardship on me in securing any service that I can render—that is after all what life insurance is.

With best wishes, I am

Sincerely yours, W. Y. Guilbert, Special Agent. WYG.

[fol. 123] "Life Insurance is a Service, Not a Commodity."

That plaintiff's claim for disability was allowed from January 13, 1931, the period fixed, being 30 days from the beginning of the disability as claimed by the plaintiff, and said disability claims of $70.00 per month, and $20.00 on the first policy and $50.00 on the second policy were paid up to and including June 13, 1931, said disability having been allowed and paid from and after the 13th day of January, 1931.

(2) That upon June 24, 1931, the plaintiff, at the defendant's request, again submitted himself to examination by Dr. J. C. Huggins of Jackson, Mississippi; that the said Dr. Huggins made a report to the Company giving the result of his examination of the plaintiff, the original of which was received at the home office of the defendant on or about the — day of June, 1931; that the original of said examination report is hereto attached and marked No. "2", that said report is as follows, to-wit:

Form No. 5

New York Life Insurance Company

Medical Examiner's Report on Claim for Disability Benefits

1. (a) Name of Insured: Roy T. Mobley.

(b) Approximately: Age, 29; height, 5-8; color of hair, brown; color of eyes, blue.

2. Residence: Lucedale, Miss.

3. How well do you know insured? Casually.

[fol. 124] What is the nature of the injury, infirmity or disease of the insured for which disability is claimed? Disability following complications of appendicitis operation.

5. (a) What was the condition of health of the Insured for the year preceding the date of the present disability? Yes.

(b) When did the illness begin which led up to Insured's present disability? Dec. 13, 1930.

(c) When did Insured first consult a physician in connection therewith? Dec. 14, 1930.

(d) From what date has he been prevented, by reason of his disability from engaging in any occupation whatsoever for remuneration or profit? Dec. 13, 1930.

(e) Give full particulars and the names and addresses of all physicians consulted? Dr. N. R. Currie, Jackson, Miss. Dr. H. R. Shands, Jackson, Miss.

6. Give your opinion as to whether or not the Insured will be permanently, continuously and wholly prevented thereby for life from pursuing any and all gainful occupations by reason of his disability? Do not think so.

7. After careful examination to what extent do you find Insured disabled and due to what cause? Applicant able to be up and about every day—BP 120—80, in my opinion able to attend to duties not requiring hard labor or excessive exertion. Has gained weight and a great deal stronger. His physician has advised not to work.

Examiner's Signature: J. C. Huggins, M. D.

[fol. 125] Dated at 6/24 1931.

That from said report the defendant's agents and officers being of the opinion that the plaintiff was not totally and permanently disabled within the meaning of the policies in question, upon July 6, 1931, wrote to the plaintiff declining the payment of further disability claims on the policies in question, said letter being in words and figures as follows, to-wit:

Exhibit—Letter, F. S. Lantry, Chairman to Roy T. Mobley, dated 7/6/31 (same as Exhibit No. 3), omitted from the printed record, being heretofore copied at page 72.

* * * * * * *

That upon July 11, 1931, the plaintiff wrote to W. Y. Guilbert, defendant's special agent at Jackson, Mississippi, a

certain letter marked Exhibit 4 to the plaintiff's said replication, which is in words and figures as follows, to-wit:

"Lucedale, Mississippi, July 11, 1931.

Mr. W. Y. Guilbert, c/o New York Life Ins. Co., Branch Office, Tower Building, Jackson, Mississippi

DEAR MR. GUILBERT:

I have just received notice from the Company that they were discontinuing payment of monthly benefits, and that no further premiums would be waived. This was not altogether a surprise to me as I discovered sometime ago that their confidential reports were obtained through parties who knew nothing about my actual condition and made no effort to find out the facts.

[fol. 126] I am as much disabled now as I have been at any time since I got up from the operation, and am therefore instructing my attorney, Mr. Barnett, of Jackson, to file suit against the Company immediately.

I have not been satisfied with the suspicious attitude in which the company has dealt with my case, and its arbitrary action in cutting off my insurance, makes me feel justified in asking that you would return my letter to you in which I set out the benefits of this insurance to me.

I am ready to return to work as soon as I feel able to do so, and in fact have made several attempts to work, I am also ready to return to work when my physicians advise me that it is safe for me to do so.

I fully appreciate your personal service to me in this matter, and upon return of my former letter, if it will benefit you, I will write you another acknowledging your value service and the benefit the insurance received had been to me, but without recommending the Company.

Very truly yours, —— ——."

That upon July 14, 1931, plaintiff again wrote to the defendants special agent Guilbert at Jackson, Mississippi, that certain letter made Exhibit 5 to the plaintiff's said replication, which is in words and figures as follows, to-wit:

Exhibit—Letter, —, to W. Y. Guilbert, dated 7/14/31 (same as Exhibit No. 5), omitted from the printed record, being heretofore copied at page 74.

* * * * * * *

To which letter of the plaintiff, under date of July 14, 1931, the said Guilbert replied under date of July 16, 1931, [fol. 127] which letter is in words and figures as follows, to-wit: the said letter being made Exhibit 6 to the plaintiff's said replication:

Exhibit—Letter, W. Y. Guilbert, Spl. Agent to R. T. Mobley, dated 7/16/31 (same as Exhibit No. 6), omitted from the printed record, being heretofore copied at page 77.

* * * * * * *

That the said Guilbert under date of July 23, 1931, wrote to the plaintiff a certain letter, which is made Exhibit 7 to the plaintiff's said replication, and the said special agent upon the same day and date wrote a letter to C. F. Randall, defendant's cashier, in the Jackson Branch Agency, which is made Exhibit 8 to the plaintiff's said replication the two said letters being in words and figures as follows, to-wit:

Exhibit—Memo. signed WYG to Mr. Mobley (same as Exhibit No. 7), omitted from the printed record, being heretofore copied at page 78.

* * * * * * *

Exhibit—Letter, Special Agent to C. E. Randall, Cashier, dated 7/23/31 (same as Exhibit No. 8), omitted from the printed record, being heretofore copied at page 79.

* * * * * * *

That upon July 21, 1931, defendant's special Agent Guilbert received a letter from Dr. N. R. Currie, of Jackson, Mississippi, plaintiff's physician, which letter was received at the home office by defendant July 28, 1931, which letter [fol. 128] is in words and figures as follows:

"July 21, 1931.

New York Life Insurance Co., Jackson, Mississippi.

Attention Mr. J. Y. Guilbert

This is to certify that I have recently examined Mr. R. T. Mobley and find him still suffering from and extreme nervous condition. He still remains in a- anemic condition. You recall from former statement, that he had, had a gastroenterostomy, and in December, 1930, he had a gangr-nous ap-

pendix. He is still unable to do any kind of work and in my opinion it will be some time before he will be able to do any physical or mental labor.

Yours truly, (Signed) N. R. Currie, M. D."

That upon July 30, 1931, upon the receipt and consideration of the letter from Dr. N. R. Currie dated July 21, 1931, the defendant, through F. S. Lantry, Chairman of its Claims Committee, addressed the following letter to its local examiner in Jackson, Mississippi, Dr. J. C. Huggins, said letter being as follows:

"July 30th, 1931.

Dr. J. C. Huggins, Jackson, Mississippi.

Re Pol. 10,340,538, Claim 64,183-B, Roy T. Mobley, Lucedale, Miss., Born 6-3-02

DEAR DOCTOR:

You will no doubt, recall having examined the above named insured in behalf of the Company a short time ago. [fol. 129] In view of the particulars contained in your report, the Company did not consider the insured any longer wholly disabled and discontinued the payment of benefits.

However, the insured has taken exception to our action, and claims that he is still wholly disabled and unable to engage in any work. In view of the circumstances, we would appreciate it if you would complete another examination, and advise us whether or not there is any change in the insured's conditioin since the time of your last examination. We are of course, particularly interested in having your opinion as to whether or not the insured is capable of engaging in some kind of work.

The usual fee of $3.00 will be allowed. If the examination is made more than three miles from your office an additional fee of $2.00 will be paid for mileage. If, for any reason you are unable to make this examination for us at these terms, please advise us promptly.

A form No. 5 and a stamped addressed envelope are enclosed for your report. Fill in the attached stub and return it to this office for payment.

Very truly yours, F. S. Lantry, Chairman. CB:-ARK.

A memorandum thereof was forwarded by defendant to its Branch Agency in Jackson, Mississippi, the same being in words and figures as follows:

"July 30th, 1931.

Jackson Branch Office.

Re Pol. 10,340,538, Claim 64,193-B, Roy T. Mobley

GENTLEMEN:

Referring to your letter of July 23rd, 1931, with enclosure please advise the insured that in view of the addi- [fol. 130] tional particulars received, the company will be pleased to give further [particulars],* consideration to his claim. Under even date we are writing direct to the Company's examiner, Dr. Huggins, for a report Form 5.

——, Chairman. CB:EK."

Under date of August 17, 1931, the defendant, through Mr. Lantry, its Chairman, wrote Dr. J. C. Huggins, Jackson, Mississippi, a certain letter, in words and figures as follows:

"August 17, 1931.

Dr. J. C. Huggins, Jackson, Miss.

Re R. T. Mobley

DEAR DOCTOR:

Referring to our communication of July 30th, we wrote you concerning the above named insured, and have no record of receiving a reply. Perhaps our letter may have miscarried in the mail or have been mislaid by you. We are therefore enclosing a copy of our letter for your reference and will appreciate a reply, as it will be of material assistance to us in deciding the merits of this case.

Very truly yours, F. S. Lantry, Chairman."

That upon the 3rd of August, 1931, a certain communication took place between defendant's cashier in its Branch Agency, C. E. Randall, and defendant's Special Agent, W. Y. Guilbert, made Exhibit 9 to the plaintiff's said replication, the same being in words and figures as follows:

*[Words in brackets erased in copy.]

Exhibit—Letter, F. S. Lantry, Chairman to W. Y. Guilbert dated 8/3/31, with Memo. signed by W. Y. Guilbert thereon (same as Exhibit No. 9), omitted from the printed [fol. 131] record, being heretofore copied at page 79.

* * * * * * *

That upon August 27th, 1931, Randall, defendant's cashier at the Jackson Branch Agency wrote to the plaintiff a certain letter made Exhibit 10 to the plaintiff's said replication, said letter containing certain enclosures made Exhibits 11 and 12 to the plaintiff's said replication, said communication and enclosure being in words and figures as follows:

Exhibit—Letter, C. R. Randall, Cashier to Roy T. Mobley, dated 8/27/31 (same as Exhibit No. 10).

Exhibit—Blank request to apply dividends left on deposit of reduction of premium and interest, if any (same as Exhibit No. 11).

Exhibit—Blank premium lien note payable to the N. Y. Life Ins. Co., for $4.39, dated 9/7/31 (same as Exhibit No. 12), omitted from the printed record, being heretofore copied at pages 80, 81 and 82.

* * * * * * *

That upon September 23, 1931, the defendant received from its Jackson, Mississippi Branch Agency the report of Dr. J. C. Huggins concerning his re-examination of the plaintiff, which took place August 6, 1931, a copy of which is hereto attached marked "3", said report being as follows:

New York Life Insurance Company

Medical Examiner's Report on Claim for Disability Benefits

1. (a) Name of Insured: Roy T. Mobley.

(b) Approximately: Age, 29; height, 5-8; weight, 160; color of hair, brown; color of eyes, brown.

[fol. 132] 2. Residence: Lucedale, Miss.

3. How well do you know the insured? Casually.

4. What is the nature of the injury, infirmity or disease of the Insured for which disability is claimed?

5. (a) What was the condition of health of the insured for the year preceding the date of the present disability? Says good.

(b) When did the illness begin which led up to Insured's present disability? Dec. 13, 1930.

(c) When did Insured first consult a physician in connection therewith? Dec. 13, 1930.

(d) From what date has he been prevented, by reason of his disability, from engaging in any occupation whatsoever for remuneration or profit? From Dec. 13, 1930.

(e) Give full particulars and the names and addresses of all physicians consulted? Dr. H. R. Shands, Jackson, Miss. Dr. N. R. Currie, Jackson, Miss.

6. Give your opinion as to whether or not the Insured will be permanently, continuously and wholly prevented thereby for life from pursuing any and all gainful occupations by reason of his disability? Do not think so.

7. After careful examination to what extent do you find Insured disabled and due to what cause? Examined Aug. 6th, report made out forward Aug. 7th, I found him at this time able to be up and about—B. P. 130-80, weight good, [fol. 133] but he states that his physician advises him not to work. Think he could do mental work, not exercise.

Examiner's Signature: J. C. Huggins, M. D.

Post Office address, Jackson, Miss. Dated at Aug. 7, 1931.

That upon September 25, 1931, the plaintiff wrote to W. Y. Guilbert a certain letter, made Exhibit 13 to the plaintiff's said replication, the same being in words and figures as follows:

Exhibit—Letter, * * *, to W. Y. Guilbert, dated 9/25/31 (same as Exhibit No. 13) omitted from the printed record, being heretofore copied at page 84.

* * * * * * *

To which letter of September 25th, 1931, the said Randall replied under date of September 26, 1931, said letter

being made Exhibit 14 to the plaintiff's said replication, and being in words and figures as follows:

Letter, C. E. Randall, Cashier to R. T. Mobley, dated 9/26/31 (same as Exhibit No. 14), omitted from the printed record, being heretofore copied at page 85.

* * * * * * *

That not having received a reply to its letter to Dr. Huggins, as aforesaid, on September 2, 1931, the defendant through Mr. F. S. Lantry, Chairman of its Claims Com-
[fol. 134] mittee as aforesaid, addressed a letter to Dr. J. C. Huggins, as follows:

September 2, 1931.

Dr. J. C. Huggins, Jackson, Mississippi.

Re Pol. 10,340,538, Claim 64,183-B, Roy T. Mobley, Lucedale, Miss. Born 6-3-02

DEAR DOCTOR:

In connection with the claim of the above named insured we have just been advised by our Branch Office at Jackson, Mississippi, that you forwarded the form No. 5 on this case to the Home Office on August 7, 1931. However, although we have made a careful search for this report, same has not been located.

Under the circumstances, we will appreciate it very much if you will kindly complete the form No. 5 enclosed and return same to this office.

Thanking you in advance for your kindness and co-operation in the matter, we remain

Very truly yours F. S. Lantry, Chairman. EB: AEK."

That having received no reply thereto upon September 17, 1931, the Chairman, Mr. Lantry, wrote to the said Huggins as follows:

September 17, 1931.

Dr. J. C. Huggins, Jackson, Miss.

Re R. T. Mobley

DEAR DOCTOR:

Referring to our communication of September 2nd, we wrote you concerning the above named insured, and have

[fol. 135] no record of receiving reply. Perhaps our letters may have miscarried in the mail, or has been mislaid by you. We are therefore enclosing a copy of our letter for your reference, and will appreciate a reply as it will be of material assistance to us in deciding the merits of this case.

Very truly yours, F. S. Lantry, Chairman."

That the Company received from Dr. Huggins, report dated August 7, 1931, at its office in New York September 23, 1931, which is filed herewith as No. 3, (said report having been heretofore copied).

That defendant's agents and servants thereupon reconsidered the plaintiff's claim, and determined that he was still totally and permanently disabled within the meaning of the policy sued upon (but defendant does not admit that the proof was conclusive as to the permanentcy of such disability) and thereupon, on October 6, 1931, determined to and did allow the plaintiff all disability claimed from July 13, 1931; that is Jackson Mississippi, Branch Office was so advised by a memorandum from the Home Office dated October 6, 1931, a copy of which is attached hereto and marked No. 4, (hereinbelow copied) as well as by telegram dated October 6, 1931, said memorandum and telegram being in words and figures as follows:

"New York Life Insurance Company

Committee on Disability Claims, F. S. Lantry, Chairman

New York, October 6, 1931.

Jackson Branch Office.

Re Disability Benefits, Policies Nos. 7802419-10340538, R. T. Mobley, Cl. No. 64183-B

[fol. 136] On Reconsideration

1. Statement is enclosed waiving payment of semi-annual premium due July 3, 1931 on Pol. No. 7802419, August 7, 1931 on Pol. No. 10340538.

8. Continuance of monthly income payments has been approved on both pols."

"October 6, 1931.

CRE:HHH.

To Mr. Charles E. Randall, Cashier New York Life Insurance Company, Jackson Tower Building, 127 South Roach Street, Jackson, Mississippi.

AXDFXGDN Mobley.

Claim approved. Check follows.

Committee on Disability Claims."

That in accordance with such determination, the defendant waived premium due July 2, 1931, on the first policy and the premium maturing August 7, 1931, on the second policy, all of which appears from certain written statements made by the defendants, its agents and servants to the plaintiff made Exhibits 15, 16, 17, 18 and 19 to the plaintiff's said replication, in words and figures as follows:

Exhibit—Statement waiving payment of semi-annual premium, dated 10/5/31 for $25.04, due on 7/2/31 (same as Exhibit No. 15), omitted from the printed record, being heretofore copied at page 86.

* * * * * * *

[fol. 137] Exhibit—Letter, E. M. Randall, Cashier to Roy T. Mobley, dated 10/9/31 (same as Exhibit No. 17), omitted from the printed record, being heretofore copied at page 87.

* * * * * * *

Exhibit—Letter, W. W Guilbert, Sp. Agent, to Roy T. Mobley, dated 10/12/31 (same as Exhibit No. 18), omitted from the printed record, being heretofore copied at page 88.

* * * * * * *

Exhibit—Letter, C. E. Randall, Cashier, to Roy T. Mobley, dated 10/31/31 (same as Exhibit No. 19), omitted from the printed record, being heretofore copied at page 89.

* * * * * * *

That the defendant thereupon continued to pay plaintiff's monthly disability claims on the policies in question up to and including the disability payment maturing February 13, 1932. That upon February 24, 1932, the plaintiff re-submitted himself to the defendant's examiner, Dr. J. C. Huggins, at Jackson, Mississippi, and Doctor Huggins' report was received at the Home Office of the defendant February 29, 1931, a copy of which is hereto attached marked No. 5.

Said report being as follows, to-wit:

"New York Life Insurance Company

Medical Examiner's Report on Claim for Disability Benefits

1. (a) Name of Insured: Roy T. Mobley.

[fol. 138] (b) Approximately: Age, 29; height, 5' 8"; weight, 160; color of hair, brown; color of eyes, blue.

2. Residence: Jackson, Miss.

3. How well do you know Insured? Casually.

4. What is the nature of the injury, infirmity or disease of the Insured for which disability is claimed? Operation for appendicitis and complications following.

5. (a) What was the condition of the Insured for the year preceding the date of the present disability? Good.

(b) When did the illness begin which led up to Insured's present disability? Dec. 13, 1930.

(c) When did Insured first consult a physician in connection therewith? Dec. 14, 1930.

(d) From what date has he been prevented, by reason of his disability, from engaging in any occupation whatsoever for remuneration or profit? Dec. 13, 1930.

(e) Give full particulars and the names and addresses of all physicians consulted? Dr. N. R. Currie, Jackson, Miss. Dr. H. R. Shands, Jackson, Miss.

6. Give your opinion as to whether or not the Insured will be permanently, continuously and wholly prevented thereby

for life from pursuing any and all gainful occupation by reason of his disability? No.

7. After careful examination to what extent to you find Insured disabled and due to what cause? B. P. 128-80, pulse 76, heart action good—appears to be able to do some [fol. 139] work as mental, says he is not working because his physician said he had low blood pressure. I find it good. Do not find him disabled from some work.

Examiner's Signature: J. C. Huggins, M. D.

Dated at Jackson 2/2/1932. Post Office Address, Jackson, Miss.

Received Feb. 26, 1932, Jackson Branch.

That the defendant sent to the plaintiff notice of premium maturing on the 7th day of February, 1932, on Policy No. 10,340,538 and a reminder notice thereof under date of March 3, 1931, which notices are made Exhibits 20 and 21 to the plaintiff's said replication, being in words and figures as follows:

Exhibit—Notice sent to Roy T. Mobley of amount premium due $66.35, date due 2/7/32 (same as Exhibit No. 20).

Exhibit—Reminder sent to Roy T. Mobley of amount of premium due $66.35, date due 2/7/33 (same as Exhibit No. 21), omitted from the printed record, being heretofore copied at pages 90 and 91.

* * * * * * *

That between the 24th day of February, 1932, and the 19th day of March, 1932, the defendant re-examined the plaintiff's disability claim, and, based upon the conclusions drawn by defendants from contents stated of the report of Dr. Huggins, decided to discontinue disability payments, and accordingly, the defendant through F. S. Lantry, Chairman, on March 19, 1932, wrote the plaintiff that cer- [fol. 140] tain letter made Exhibit 22 to the plaintiff's said replication, which is in words and figures as follows:

Exhibit—Letter F. S. Lantry, Chairman, to Roy T. Mobley, dated 3/19/32 (same as Exhibit No. 22), omitted from the printed record, being heretofore copied at page 92.

* * * * * * *

That under date of April 7, 1932, defendant's cashier in its Jackson, Mississippi Branch Office wrote to plaintiff that certain letter made Exhibit 24 to the plaintiff's said replication which is in words and figures as follows:

Exhibit—Letter, C. C. Randall, Cashier, to Roy T. Mobley, dated 4/7/32 (same as Exhibit No. 24), omitted from the printed record, being heretofore copied at page 94.

* * * * * * *

Upon April 20, 1932, defendant, through its Chairman, wrote to the plaintiff a certain letter made Exhibit 23 to the plaintiff's said replication, in words and figures as follows:

Exhibit—Letter, F. S. Lantry, Chairman, to Roy T. Mobley, dated 4/20/32 (same as Exhibit No. 23), omitted from the printed record, being heretofore copied at page 93.

* * * * * * *

That upon April 20, 1932, the defendant, for the purpose of reconsidering the plaintiff's claim, wrote to Dr. Law-
[fol. 141] rence W. Long, a competent and reputable physician, of Jackson, Mississippi, a certain letter, which is in words and figures as follows:

"April 20th, 1932.

Dr. Lawrence W. Long, 514 East Capital St., Jackson, Miss.

Re Claim No. 64,183-B Pol. 10,340,538, etc., Roy T. Mobley, 535 Valley St., Jackson, Miss.

Dear Doctor:

We have under consideration the question of continuing the payment of benefits to the above named insured. We wish to advise that information recently received indicated that he was no longer totally disabled and unable to engage in any remunerative work, and we, therefore, discontinued the payment of benefits. The insured, however, has taken exception to our action, and contends that he is still totally disabled.

In view of the circumstances, we will appreciate it if you will complete an examination, advise us of your findings, and let us have your opinion as to whether or not this insured is capable of engaging in some work. The usual fee of $3.00 will be allowed. If examination is made more than three miles from your office an additional fee of $3.00 will be paid for mileage. If for any reason you are unable to make this examination for us under these terms, please advise us promptly. A stamped addressed envelope and a form No. 5 are enclosed for your report. Please fill in the attached stub and return same to this office for payment.

Yours truly, F. S. Lantry, Chairman B. CB:SN.

[fol. 142] That upon the 2nd day of May, 1932, defendant received from Dr. Long the following report, which is attached hereto and marked No. 6.

New York Life Insurance Company

Medical Examiner's Report on Claim for Disability Benefits

1. (a) Name of Insured: Roy T. Mobley, No. 64,183-B.

(b) Approximately: Age, height, weight, color of hair, color of eyes.

2. Residence: 535 Valley Street, call made to that location, and had moved to 939 No. Congress St.

3. How well do you know Insured?

4. What is the nature of the injury, infirmity or disease of the Insured for which disability is claimed? And on checking that address I find that he has returned to Leakesville, Miss., and is not in this city at present—if so, after two attempts we are unable to locate him. Referring to letter of April 20th, 1932. L. W. Long, M. D.

Examiner's Signature: L. W. Long, M. D.

Post Office Address, Jackson, Miss.
Dated at 4-28-1932.

The defendant learned that the plaintiff had removed to Lucedale, Mississippi, and upon May 4, 1932, for the purpose of continuing its investigation of the plaintiff's claim, wrote a letter to Dr. James A. Dorsett, said to be a

[fol. 143] competent and reputable physician, at Lucedale, Mississippi, which letter is in words and figures as follows:

"May 4th, 1932.

Dr. James A. Dorsett, Lucedale, Miss.

Re Claim No. 64,183-B, Pol. 10,340,419, etc., Roy T. Mobley, Lucedale, Miss.

Dear Doctor:

We have under consideration the question of continuing the payment of benefits to the above named insured. We wish to advise that information recently received indicated that he was no longer totally disabled and unable to engage in any remunerative work, and we, therefore, discontinued the payment of benefits. The insured however, has taken exception to our action, and contends that he is still totally disabled.

In view of the circumstances, we will appreciate it if you will complete an examination, advise us of your findings, and let us have your opinion as to whether or not this insured is capable of engaging in some work.

The usual fee of $3.00 will be allowed. If examination is made more than three miles from your office an additional fee of $2.00 will be paid for mileage. If for any reason you are unable to make this examination for us under these terms advise us promptly.

A stamped addressed envelope and a form No. 5 are enclosed for your report—Please fill in the attached stub and return same to this office for payment.

Yours truly, F. S. Lantry, Chairman, Bule. CB:SN."

That in the meantime it received from Dr. J. E. Beck of Mobile, Alabama, a competent and qualified physician and [fol. 144] surgeon, a letter concerning the plaintiff's condition, dated May 4, 1932, which is in words and figures as follows:

"May 4, 1932.

New York Life Insurance Co., New York.

Re Claim No. 64,183-B, Pol. 7,802,419-10,340,538

Gentlemen:

Referring to Mr. R. T. Mobley. His blood pressure today is 130/100, which I interpret as indicating myocardial insufficiency.

Radiographic examination about April 1st, 1932 showed hypermotility of the stomach and intestines, patent gastroenterostomy opening, but the greater percentage of the barium meal passing through the pylorus.

He has extreme hyperacidity about ½ to 1 hour after eating, followed by extreme lassitude.

Riding upon a train or in any automobile has frequently caused vomiting the last year.

Whether or not the myocardial insufficiency is primarily organic or is functional and a complication of his extended period of gastrointestinal disorder I am unable to state.

For treatment I have urged him to remain in bed several hours each day and restrict his diet to the list furnished him.

He is totally disabled at present and the date of his restoration to health is uncertain.

Very respectfully, J. E. Beck, M. C."

That upon the 12th day of May, 1932, the plaintiff having submitted himself for examination to Dr. J. A. Dorsett, of Lucedale, Mississippi, a report upon the plaintiff's con- [fol. 145] dition was made by Dr. J. A. Dorsett, a copy of which is hereto attached, marked No. "7".

New York Life Insurance Company

Medical Examiner's Report on Claim for Disability Benefits

1. (a) Name of Insured: Roy T. Mobley.

(b) Approximately: Age, 30; height, 5-8; weight, 156; color of hair, dark; color of eyes, blue.

2. Residence: Lucedale, Miss., at present.

3. How well do you know Insured? Real well for past three years.

4. What is the nature of the injury, infirmity or disease of the Insured for which disability is claimed? Myocardial insufficient or some of its kindred symptoms, pulse ratio sitting 90.

5. (a) What was the condition of health of the Insured for the year, preceding the date of the present disability? Very good.

(b) When did the illness begin which led up to Insured's present disability? 1930, Dec.

(c) When did Insured first consult a physician in connection therewith? Dec. 14, 1930.

(d) From what date has he been prevented, by reason of his disability, from engaging in any occupation whatsoever for remuneration or profit? Dec. 12, 1930.

[fol. 146] (e) Give full particulars and the names and addresses of all physicians consulted? Dr. N. R. Currie, Jackson, Miss., Dr. H. R. Shands, Jackson, Dr. J. E. Beck, Mobile, Ala.

6. Give your opinion as to whether or not the insured will be permanently continuously and wholly prevented thereby for life from pursuing any and all gainful occupations by reason of his disability? At present he is disabled from work, but for how long, he will be, I cannot say.

7. After careful examination to what extent do you find Insured disabled and due to what cause? Total disabled at present—his heart.

Examiner's Signature: J. A. Dorsett.

Post Office Address, Lucedale, Miss.
Dated at Lucedale, Miss., 1932.

That upon May 16, 1932, the plaintiff wrote to the defendant's Branch Office a letter, in words and figures as follows:

"Lucedale, Miss., May 16, 1932.

New York Life Ins. Co., Branch Office, Jackson, Miss.

GENTLEMEN:

Unless I can get a decision on resumption of my disability benefits by the end of this week, I will have to enter suit in the Circuit Court of George County.

Very truly yours, R. T. Mobley."

[fol. 147] That upon May 18, 1932, the Cashier of defendant's Branch Agency wrote to the plaintiff that certain letter made Exhibit 25 to the plaintiff's said re[illegible]tion, in words and figures as follows:

Exhibit—Letter, C. E. Randall, Cashier, to Roy T. Mobley, dated 5/18/32 (same as Exhibit No. 25), omitted from the printed record, being heretofore copied at page 94.

* * * * * * * *

That on and prior to May 21, 1932, the defendant having reconsidered the plaintiff's claim for disabilities determined to continue the same, and upon May 21, 1932, sent a telegram to its Branch Agency at Jackson, Mississippi, in words and figures as follows:

"May 21st, 1932.

Mr. Charles E. Randall, Cashier, New York Life Ins. Co., Jackson Tower, Bldg., 127 S. Roach St., Jackson, Miss.:

Advise Roy Robley claim approved. Check and waiver statement following.

Comm. on Disability Claims. Mc:AK."

That on the same date it sent to its Branch Agency at Jackson, Mississippi, a memorandum allowing the plaintiff's disability claim and waiving premiums upon said policies, and each of them, a copy of which is attached hereto marked No. "8". Said memorandum being hereinbelow copied.

[fol. 148] New York Life Insurance Company

Jackson Branch Office

New York, May 21, 1932.

Claim No. 64,183-B

LRF.

1. On reconsideration statement is enclosed waiving payment of semi-annual premium due July 9, 1932, on pol. 7,802,419.

7. Monthly disability income payments have been approved beginning with the payment due March 13, 1932, on both pols.

That upon May 21, 1932, after sending the telegram to its Branch [agency on May 21, 1932, it receive]* office dated May 21, 1932, appears the following indorsement:

*[Words in brackets erased in copy.]

"This approval was before receipt of assured's letter of May 16th."

That upon May 21, 1932, after sending the telegram to its Branch Agency on May 21, 1932, it received plaintiff's letter of May 16, 1932, made Exhibit 25 to plaintiff's said replication as aforesaid.

That upon July 17, 1932, plaintiff wrote to defendant's Branch Agency, received by it upon July 19, 1932, a certain letter, in words and figures as follows:

"Lucedale, Miss., July 17, 1932.

New York Life Ins. Co., Branch Office, Jackson, Miss.

In re Pol. No. 10,340,538

GENTLEMEN:

I am in receipt of premium notice for August 7th. As I am still disabled please send me waiver of this premium. [fol. 149] Please do not delay this matter unnecessarily.

Very truly yours, R. T. Mobley."

That upon December 17, 1932, the plaintiff wrote to the defendant at its Home Office in New York a certain letter, received by it upon December 20, 1932, which is in words and figures as follows:

"R. T. Mobley,

927 Inge St., Jackson, Miss.

Dec. 17, 1932.

New York Life Insurance Company, 51 Madison Avenue, Madison Square, New York, N. Y.

Re R. T. Mobley, Pols. 7,802,419, Disability Benefits

GENTLEMEN:

I have not received my disability benefit due December 13, 1932. Your Branch Office here can give no reason for the delay. I have a wife and a three year old baby, besides myself, who are absolutely dependent upon this insurance, and I must know by return mail what I am to expect in regard to the payment of this benefit. My condition and

circumstances are such that I cannot wait more than a few days longer for definite information from you about this matter. Please do me the courtesy of giving me this information by return mail.

Very truly yours, R. T. Mobley, 927 Inge St., Jackson, Mississippi."

[fol. 150] That upon December 27, 1932, the defendant wrote to the plaintiff a certain letter, being Exhibit 27 to the plaintiff's said replication, which is in words and figures as follows:

Exhibit—Letter, Frank S. Lantry, Chairman, to R. T. Mobley, dated 12/27/32 (same as Exhibit No. 27), omitted from the printed record, being heretofore copied at page 96.

* * * * * * * *

That up to February 13, 1933, the defendant had paid to the plaintiff the disability claims previously maturing on said policies, and each of them and waived payment of the premiums maturing upon said policies, which would keep the insurance in force on the first policy until the 9 day of August, 1933, and on the second policy to the 7 day of March, 1933.

(3) That upon the 3rd day of January, 1933, it received from one of its confidential inspectors at Jackson, Mississippi, a report upon the assured, copy of which is hereto attached No. "9". Said report being hereinbelow copied as follows:

New York Life Insurance Co.

Office at New Orleans, La.

(Date:) 12-22-32.

Report on Roy T. Mobley, Age 30, Local Address Lucedale, Miss., formerly—now Jackson, Miss.

Serial No. 22,241, Claim No. 64,183-B. We enclose fee of Pol. 10,340,538, $50c, by Check No. A 57,114.

1. How long have you personally known him? About 7 years—were classmates in law school.

[fol. 151] (b) Or, about how long have your informants known him?

(c) About how long since your or your informants have seen him or heard directly of him? Have not seen him for several months, talked to him on phone today.

2. (a) Is he now sick or ailing? Apparently.

(b) What is nature of his sickness? Have not been able to determine—see note.

(c) What physicians are attending him? Dr. E. A. Copeland, Jackson.

(d) At what sanitariums or hospitals, if any, has he received treatment? Do not know.

3. (a) Has he resumed working? No.

4. (a) Is he confined to bed? No.

(b) If not, is he confined to his home? Not necessarily—see note.

5. To what extent is he able to do ordinary things? How does he spend his time during the day? What are his activities, forms of recreation or amusement? It has been difficult to get any information regarding this assured. He apparently stays at home all or most of the time, although several informants have reported seeing him on the streets recently. He told me today he had never recovered from an operation for appendicitis. He has told other parties that he had stomach trouble or high blood pressure—Several informants frankly state that in their opinion his trouble is too much insurance.

[fol. 152] 6. If not working, about how soon do you think he will be able to? Could probably work now.

7. If not working, but you think he could if he wanted to, please give your reasons for this opinion. He recently "sat-in" on the trial of a law suit at New Augusta, although he did not actively try it. The nature of his work has always been confining and every report I got is to the effect that he could still do this work if he had an opportunity.

[W. H. Watkins, Jr.]*

Date 12-29-32.

[*Signature erased in copy.]

Following such communications, upon January 19, 1933, the defendant wrote to the plaintiff as follows, said letter being Exhibit 28 to the plaintiff's replication, said letter being in words and figures as follows:

Exhibit—Letter Frank S. Lantry, Chairman, to Roy T. Mobley, dated 1/19/33 (same as Exhibit No. 28), omitted from the printed record, being heretofore copied at page 96.

* * * * * * * *

That upon January 26, 1933, the defendant at New York City, New York, received from the plaintiff the blank requested to be filled out, which is made Exhibit 29 to the plaintiff's said replication, copy of which is hereto attached, marked No. "10", same being as follows, to-wit:

Application to New York Life Insurance Company for Continuance of Disability Benefits under Policy Number 10,340,538

1. Full name of Insured: Roy T. Mobley.

[fol. 153] 2. Have you resumed working? No.

3. If not, are your prevented from working solely because of bodily injury or disease? (State facts briefly.) Yes.

4. Have you attempted to do any work since the date disability began? (If so, state facts.) No.

5. Are you confined to bed? Partially.

6. Are you confined to the house, hospital or a sanitarium? (If so, state which and how long so confined.) My condition keeps me in the house most of the time.

7. To what extent are you able to be out of doors? No definite period.

8. Describe your daily activities briefly. Get up 10 A. M. to noon, sit in chair or lie on day bed, reading, listening to radio or doing nothing until bed time 10 P. M., eat noon & 6 P. M., go out when absolutely necessary, occasionally take short walk or ride in late afternoon for health. Sleep fitfully.

9. If not working, when do you expect to be able to resume work? See back.

10. How often is it necessary for you to consult a physician? As often as I can afford.

11. When did you last consult a physician? (Give name and address of last physician consulted.) Dr. J. E. Beck, Mobile, Ala. in November, 1932.

12. From what Companies or associations are you now receiving disability benefits? (State amount of benefits re-[fol. 154] ceive monthly from each). Only New York Life —$70 per month.

13. Has any Company or Association discontinued payment of benefits? One month you cut me off and the next you suspend my benefits.

Signature of Insured: Roy T. Mobley.
Present Address, 927 Inge Street, Jackson, Mississippi.

Sworn to before me this 24th day of January, 1933.
Marie Bourgeois, Notary Public. (Seal.)

(Received Jan. 26, 1933, Home Office.)

I have been disabled for more than two years without any notic-able improvement in my condition. I no longer entertain any hope of being able to return to active practice of the law. Whenever I attempt any kind of exercise, mental or physical, there is an immediate and rapid deterioration of my physical and nervous system. My doctors have advised me to take as much exercise as I feel able to do, but as yet I have been unable to find any kind of exercise which I could repeat each day without injury myself.

My problem is a two-fold one of first rebuilding my health to the point where I can do a sufficient amount of physical exercise regularly and second to find some means of livelihood which will require a minimum of physical action and which at the same time will not overstrain my nervous system.

I am doing the best I can to rehabilitate myself, and would appreciate it if you would spend some time trying to help me do so rather than worrying me with a constant stream of investigations.

Roy T. Mobley.

[fol. 155] That on or about the 24th day of January, 1933, it requested Dr. Huggins, of Jackson, Mississippi, to make

a further and additional report on the plaintiff; that the copy of the report made by Dr. Huggins in response to said request is hereto attached, marked No. "11", and same is hereinbelow copied as follows, to-wit:

New York Life Insurance Company

Medical Examiner's Report on Claim for Disability Benefits

1. (a) Name of Insured: Roy T. Mobley.

(b) Approximately: Age, 30; height, 5' 8"; weight, 155; color of hair, brown; color of eyes, blue.

2. Residence? Jackson, Miss.

3. How well do you know Insured? Casually.

4. What is the nature of the injury, infirmity or disease of the Insured for which disability is claimed? Appendicitis operation, heart trouble.

5. (a) What was the conditioin of health of the Insured for the year preceding the date of the present disability? Good.

(b) When did the illness begin which led up to Insured's present disability? Dec. 13, 1930.

(c) When did Insured first consult a physician in connection therewith? Dec. 14, 1930.

(d) From what date has he been prevented, by reason of his disability from engaging in any occupation whatso- [fol. 156] ever for remuneration or profit? Since Dec. 13, 1930.

(e) Give full particulars and the names and addresses of all physicians consulted? Dr. N. R. Currie, Jackson, Miss.; Dr. H. R. Shands, Jackson, Miss.; Dr. Beck, Mobile, Alabama.

6. Give your opinion as to whether or not the Insured will be permanently, continuously and wholly prevented thereby for life from pursuing any and all gainful occupations by reason of his disability. Should be able to do some clerical or mental work.

7. After careful examination to what extent do you find Insured disabled and due to what cause? Low blood pres-

sure, complains of indigestion, complains of no energy, weakness. Dr. Beck in Mobile advised him Nov. 1932 not to do any work of any nature, says diagnosis heart trouble.

Examiner's Signature: J. C. Huggins, M. C.

Post Office address, Jackson, Miss.

B. Ps., 140.
D. 85, Anemic.

Dated at 1-26-1933.

That upon February 8, 1933, the defendant wrote to Dr. Huggins, of Jackson, Mississippi, for additional information. The original letter was returned to the defendant by Dr. Huggins with reply thereupon, received by defendant [fol. 157] February 24, 1933, which said letters are in words and figures as follows:

"February 8, 1933.

Dr. J. C. Huggins, 235 N. Capital Street, Jackson, Mississippi.

Re Claim No. 64,183-B, Policy No. 10,340,538, Roy T. Mobley, Jackson, Miss.

Dear Doctor:

You will no doubt recall having examined the above named insured for us on January 26, and as we are in need of further information it will be appreciate- if you will kindly furnish us with same.

We are particularly interested in learning if at the time you examined Mr. Mobley, you considered him totally disabled and prevented thereby from performing any work, from following any occupation or from engaging in any business whatsoever for remuneration or profit. It will also be appreciated if you will kindly advise whether the assured's condition is such that he could perform some work, not necessarily the same type of work, or the same amount of work, that he was accustomed to doing prior to the onset of his illness.

We are enclosing a stamped addressed envelope for your convenience in reply.

Yours very truly, Frank S. Lantry, Chairman.

In reference to Mr. Mobley—I feel that he could be doing some work—not of the same type or amount, but some [fol. 158] clerical work that would not tax him—I do not see where it would make his condition any worse. His physical condition is not such that he is unable to do anything—however, I do not think he could follow any occupation requiring mental or physical strain.

Yours very truly, J. C. Huggins."

That upon February 22, 1933, plaintiff wrote to the defendant a certain letter made Exhibit 30 to the plaintiff's said replication, received by the Defendant February 27, 1933, which said letter is in words and figures as follows:

Exhibit—Letter, Roy T. Mobley, to N. Y. Life Ins. Co., dated 2/22/33 (same as Exhibit No. 30), omitted from the printed record, being heretofore copied at page 99.

. . . . . .

That the plaintiff again wrote the defendant upon February 28, 1933, which letter is made Exhibit 31 to the plaintiff's said replication, and is in words and figures as follows:

Exhibit—Letter, R. T. Mobley, to N. Y. Life Ins. Co., dated 2/28/33 (same as Exhibit No. 31), omitted from the printed record, being heretofore copied at page 100.

. . . . . .

[fol. 159] That upon March 1, 1933, the defendant wrote to the plaintiff a certain letter, in words and figures as follows:

"Mar. 1, 1933.

Mr. Roy T. Mobley, Jackson, Miss.

Re Claim No. 64,183-B, Pol. No. 10,340,538, etc.

Dear Sir:

Referring to the above numbered policies on which monthly disability income payments have been made up to and including January 13, 1933, inclusive, it appears that

for some time past you have not been continuously totally disabled within the meaning of the Disability Benefit Provision contained in the policies.

In view of this condition, we regret to inform you that no further monthly disability income payments will be made and the premiums due on and after February 7, 1933, became payable i conformity with the terms of the contracts.

Very truly yours, F. T. Lantry, Chairman. HT:W."

That upon March 6, 1933, the plaintiff wrote to the defendant that certain letter made Exhibit 32 to the plaintiff's said replication, which is in words and figures as follows:

Exhibit—Letter, Roy T. Mobley to N. Y. Life Ins. Co., dated 3/6/33 (same as Exhibit No. 32), omitted from the printed record, being heretofore copied at page 101.

* * * * * * *

[fol. 160] That said letter was received by defendant at its Home Office in New York City upon March 9, 1933, and replied to upon the latter named dated by defendant's letter, which is in words and figures as follows:

"March 9, 1933.

Mr. Roy T. Mobley, Lucedale, Miss.

Re Policy 10,340,538, etc., Claim No. 64,185-B

Dear Sir:

We are in receipt of your communication of March 1933, in respect to your above numbered claim. The matter is receiving our attention and we will advise you further within the course of a few days.

Yours very truly, F. S. Lantry, Chairman."

That upon March 9, 1933, plaintiff's attorneys wrote to defendant a certain letter received by it in New York on March 9, 1933, which is in words and figures as follows:

"Gulfport, Mississippi, March 9th, 1933.

New York Life Insurance Company, 51 Madison Avenue, New York, New York.

Re Your policies No. 7802419 and No. 10340538—Roy T. Mobley, Insured

GENTLEMEN:

This is to advise you that we have been employed by Mr. Roy T. Mobley in regard to the foregoing claims which have arisen under the above policies and we contemplate taking immediate legal action unless this matter is satisfactorily settled within the next seven days.

[fol. 161] We have in our possession your letter of March 1st, 1933, addressed to Mr. Mobley in which you deny that he is totally disabled and that you deny any further liability under said policies by virtue of total and permanent disability and that premiums will be due on and after February 7th, 1933.

This is to put you on notice that Mr. Mobley is now totally and permanently disabled and will continue to be so throughout the remainder of his natural life and he refuses to make any payments of premiums on either policy for the reason that you are indebted to him, and for the further reason under the terms of your contract as long as he is disabled there is a waiver of his premiums.

This is to further advise you that since you have breached your contract we now call on you to pay said policies in full for the remainder of his natural expectancy, which is thirty-four years and six months from this date which under the terms of said policies will amount to $28,980.00. We therefore make demand for the payment in full of this claim and will immediately file suit unless the matter is adjusted in the next seven days.

Yours very truly, R. W. Thompson, Jr. RWT:MS."

To which the defendant replied by air mail under date of March 16, 1933, which said letter is in words and figures as follows:

Air Mail

"March 16, 1933.

Mr. R. W. Thompson, Jr., Attorney at Law, 400-408 Hewes Bldg., Gulfport, Mississippi.

Re Roy T. Mobley, Claim No. 64,183-B, Pols. No. 10,340,538-7,802,419

DEAR SIR:

Your letter of March 9, 1933, in regard to the claim of the above named insured has been received and the con- [fol. 162] tents of same has been carefully noted.

We will accordingly review our file on the case and write to you fully, in the course of the next day or two.

Very truly yours, F. S. Lantry, Chairman. KB: NRC."

That on March 17, 1933, defendant wrote to plaintiff's counsel, R. W. Thompson, a certain letter, in words and figures as follows:

"March 17, 1933.

Mr. R. W. Thompson, Attorney at Law, Mize, Thompson & Mize, 400-408 Hewes Bldg., Gulfport, Miss.

Re Roy T. Mobley, Policy No. 10,340,538, etc., Claim No. 64,183-B

DEAR SIR:

Referring further to your letter dated March 9, 1933, concerning the claim of the above named insured, we wish to advise that when the company had under consideration the question of continuing the payment of benefits on the claim after the monthly payment made as of January 13, 1933, information obtained as the result of our customary investigation indicated that the insured has been able to be up and about every day and to all appearances sufficiently recovered to permit him to resume the performance of some remunerative work. Furthermore, the Company's medical examiner in his report of the examination made January 26, 1933, advised that in his opinion the insured is capable of performing some light work of a remunerative nature.

[fol. 163] Under the circumstances since the policy provides, that the payment of disability benefits is subject to the continuance of total disability preventing the insured from performing any work or engaging in any occupation whatsoever for remuneration or profit, the Company in view of these reports could not consider the insured was any longer totally disabled as defined and discontinued the payment of benefits, to which decision we must adhere.

Yours very truly, F. S. Lantry, Chairman. E. J. Burns."

That upon the 13th day of April, 1933, defendant's Branch Agency at Jackson, Mississippi, wrote to the plaintiff a certain communication, made Exhibit 33 to the plaintiff's said replication, which is in words and figures as follows:

"New York Life Insurance Company,

51 Madison Avenue, Madison Square,

New York, N. Y.

Branch Office at Jackson, Miss.

Date: April 13, 1933.

Mr. Roy T. Mobley, Lucedale, Miss.

Policy No. 10,340,538

DEAR SIR:

Your above numbered policy has lapsed for the non-payment of premium. The Company urges you upon receipt of this letter to apply for reinstatement of the policy. Please complete this application for reinstatement printed on the back and have your signature duly witnessed.

[fol. 164] Return the application to me together with $66.35 and 6% interest thereon from the 7th day of February, 1933.

In order to protect your own interest I trust you will give this matter your prompt attention.

Very truly yours, C. W. Cherry, Cashier.

The interest up to April 20th will amount to 78 cents. Please include this interest in your remittance.

P. S.—The attached form No. 224 D is (over) to be executed without expense to the Company by one of the following: J. A. Dorsett and J. W. Horn."

That upon June 5, 1933, the defendant addressed the following communication to the plaintiff concerning Policy No. 10,340,538, which is in words and figures as follows:

"New York Life Insurance Company,

51 Madison Avenue, Madison Square,
New York, N. Y.

June 5, 1933.

Mr. Roy T. Mobley, Lucedale, Mississippi.

DEAR SIR:

Policy No. 10,340,538.
Due date of premium which remains unpaid, 2-7-33.
Insurance automatically continued until 6-20-37.
Amount of continued insurance $5000.00.

Application for re-instatement, after default in payment of the premium specified above, not having been made, notice is hereby given that pursuant to the terms of the [fol. 165] policy the value of the policy has been applied to purchase continued insurance as stated above.

Very truly yours, Arthur Hunter, Vice-President."

That on or about the 9th day of June 1933, the defendant sent to the plaintiff premium notice maturing the 9th day of July, 1933, Policy No. 7,802,419-S7, in words and figures as follows, to-wit:

Please return this notice with your remittance
New York Life Insurance Company

Home Office, 51 Madison Avenue, Madison Square,
New York, N. Y.

hereby gives notice that a payment will be due as specified below provided the policy is then in force.

Amount due, Premium $25.04.
Policy Number 7,802,419.
Date due 9th day of July, year 1933.
Interest on Loan or Note: ——.
Roy T. Mobley, Lucedale, Miss.

Payment must be made to the cashier of the company's Jackson Branch Office, Jackson Tower Bldg., 127 Roach

St., Jackson, Miss., or to the premium cashier at the home office.

Office hours, 9 A. M. to 4 P. M. Saturday, 9 A. M. to 12 M. only.

Unless said payment shall be made to the Company or the duly appointed agent or person authorized to collect [fol. 166] it by or before the date it falls due, said policy and all payments thereon will become forfeited and void except that this notice shall not affect either the period of grace or the right to non forfeiture benefits, if provided for by the statute.

Make payment only in exchange for the Company's official premium receipt signed by the President, and countersigned by the person to whom payment is made. Remittance may be made by bank draft, check, postoffice or express money order, payable to the order of the New York Life Insurance Company, at par at New York or at the place of payment indicated on the face of this notice.

Please notify in writing the office to which you pay your premimus of any error or change in your post-office address, giving the number of each policy you hold.

Thomas A. Buckner, President."

472-N, March 1931.

Page 52 of the agreed statement of facts begins with this letter.

That upon July 8, 1933, plaintiff's counsel wrote to defendant a certain letter received in New York City July 11, 1933, which is in words and figures as follows:

Gulfport, Mississippi, July 8th, 1933.

New York Life Insurance Company, 51 Madison Avenue, Madison Square, New York City.

In re Policy No. 10340538—Roy T. Mobley—Claim No. 64-183-B

GENTLEMEN:

Your letter of June 5th to Mr. Mobley at Lucedale, Mississippi, advising that you had applied the value of the [fol. 167] policy to purchase continued insurance was turned over by him to us for reply.

In reply thereto will state that we wrote you on March 9th, 1933, that Mr. Mobley was totally and permanently disabled and made demand upon you at that time for the value

of the benefits provided by said policy, and you are therefore not authorized to apply the value to purchase continued insurance, and Mr. Mobley does not agree to said application.

We expect to file suit in this matter within the next few days.

Very truly yours, Mize, Thompson & Mize, by S. C. Mize. SCM:MD."

Upon July 12, 1933, defendant wrote to plaintiff's counsel a certain letter in words and figures as follows:

"July 12, 1933.

Mr. S. C. Mize, Mize, Thompson & Mize, Attorneys at Law, 400-408 Hewes Bldg., Gulfport, Miss.

Re Roy T. Mobley, Pol. No. 10,340,538, Claim No. 64,183-B

DEAR SIR:

We have received your letter of July 8th, 1933, and are willing to give further consideration to the question of the above named insured's claim for disability benefits. In that regard will you please furnish us with a statement completed by the assured's attending physician describing his condition since the early part of January, 1933.

[fol. 168] In order that the matter may receive prompt attention we are requesting one of our physicians to call upon the assured for the purpose of a medical examination and he may expect to hear from the Doctor in that regard very shortly.

Yours very truly, F. S. Lantry, Chairman."

That the defendant thereupon on July 17, 1933 addressed to it local examiner at Lucedale, Mississippi, a certain communication, requesting said examiner to re-examine the plaintiff, which said letter is in words and figures as follows:

"July 17, 1933.

Dr. J. A. Dorsett, Lucedale, Mississippi.

Re Claim No. 64,183-R, Pol. 10,340,538, etc., Roy T. Mobley, Lucedale, Miss.

DEAR DOCTOR:

According to information recently received in the course of our consideration of the above named insured's claim

for disability benefits there is considerable doubt as to whether he is still totally disabled and wholly prevented from working.

In view of the circumstances it will be appreciated by the Company if you will examine the Insured and give us a detailed report of his condition together with your opinion as to whether he is totally disabled and the prognosis in the case.

The usual fee of $3.00 will be allowed. If the examination is made more than three miles from your office, an additional fee of $2.00 will be paid for mileage. If for any [fol. 169] reason you are unable to make this examination for us under these terms please advise us promptly.

A stamped addressed envelope and a form No. 5 are enclosed for your report. Please fill in the attached stub and return to this office for payment.

Yours truly, F. S. Lantry, Chairman. ET:KBC."

That the plaintiff submitted himself to re-examination at the hands of Dr. Dorsett upon the morning of July 24, 1933, was re-examined by Dr. Dorsett, the result of which examination was reported to the defendant at its New York Office and received about July 8, 1933, a copy of which report is attached and marked No. "12". Said report being hereinbelow copied as follows, to-wit:

New York Life Insurance Company

Medical Examiner's Report on Claim for Disability Benefits

1. (a) Name of Insured: Roy T. Mobley.

(b) Approximately: Age, 31; height, 5 ft. 8 in.; weight, 160; color of hair, brown; color of eyes, blue.

2. Residence: Lucedale, Miss., at present time.

3. How well do you know Insured? Real well for past two years.

4. What is the nature of the injury, infirmity or disease of the Insured for which disability is claimed? Myocarditis "chronic".

5. (a) What was the condition of health of the Insured for the year preceding the date of the present disability? Good.

[fol. 170] (b) When did the illness begin which led up to Insured's present disability? Dec. 13, 1930.

(c) When did Insured first consult a physician in connection therewith? Dec. 14, 1930.

(d) From what date has he been prevented, by reason of his disability from engaging in any occupation whatsoever for remuneration or profit? Dec. 13, 1930.

(e) Give full particulars and the names and addresses of all physicians consulted? Dr. H. M Shands, Jackson, Miss.; Dr. N. R. Currie, Jackson, Miss.; Dr. J. E. Beck, Mobile, Ala.; Dr. F. S. Gay, Biloxi, Miss.

6. Give your opinion as to whether or not the Insured will be permanently, continuously and wholly prevented thereby for life from pursuing any and all gainful occupations by reason of his disability. It seems from past history and records of such cases that he will be permanently prevented from a strenuous occupation.

7. After careful examination to what extent do you find Insured disabled and due to what cause? The Insured has a slight pallor or appearance, some slight edema not very noticeable upon examination of heart it is some enlarged and upon exertion he develops deponea—all of this was caused evidently—1930 by intestinal intoxication gangrenous appendix, etc.

Examiner's Signature: J. A. Dorsett.

Post Office Address: Lucedale, Miss.
Dated at Lucedale, Miss., 7/24/33.

That upon receipt of said report from its said local examiner, Dr. Dorsett, the defendant addressed to the said [fol. 171] Dr. Dorsett, under date of July 28, 1933, the following letter:

"July 28, 1933.

Dr. J. A. Dorsett, Lucedale, Mississippi.

Re Claim No. 64,183-R. Pols. No. 10,340,538, etc., Roy T. Mob. Lucedale, Miss.

Dear Doctor:

It will be appreciated if you will supplement the form No. 5 which you completed on July 24, 1933, the date on

which you examined the Insured and let me know whether in your opinion he was totally disabled at that time.

Yours truly, F. S. Lantry, Chairman. HT:HRC."

That a response to defendant's letter from Dr. Dorsett under date of August 2, 1933, was received by the Home Office August 5, 1933, said letter from Dr. Dorsett being in words and figures as follows:

"Aug. 2, 1933.

DEAR SIR:

In reply to above question I will say that Roy T. Mobley is not totally disabled from some work, but not able to do hard work & he is not confined to his bed or house.

Yours truly, J. A. Dorsett."

Whereupon the defendant's officers and agents reconsidered plaintiff's claim with the result that on or about the 9th day of August, 1933, defendant's agents and serv-
[fol. 172] ants concluded that the plaintiff continued to be totally and permanently disabled, within the meaning of said policy as hereinbefore set out and accordingly upon August 9th, 1933, it executed and issued and mailed defendant's counsel a notice waiving premiums as to each of the policies in question, the said waiver as to Policy No. 10,340,538 being in words and figures as follows, to-wit:

"No. 189977.

Waiver of Premium Statement

New York Life Insurance Company,

51 Madison Avenue, Madison Square

New York, August 9th, 1933.

To the Holder of Policy No. 10,340,538—R. T. Mobley:

On account of disability of the Insured under the above numbered policy, the New York Life Insurance Company hereby waives payment of the semi-annual premium of $66.35 on said policy, falling due on the 7th day of Feb. and Aug. 1933, but without waiving or otherwise changing any of the terms or conditions of said policy.

This statement shall have no force or effect unless it is countersigned by the Registrar of the Company.

Countersigned by J. W. Behan, Registrar. Thomas A. Buckner, President."

That accompanying said notice waiving payments on each of said policies it mailed to its own counsel disability drafts on the Commercial Bank & Trust Company of New York City, New York, covering all disability payments [fol. 173] under said policies, and each of them accruing from February 13, 1933, and including July 13, 1933, the notice waiving premiums on each of said policies, as well as disability payments were unconditionally tendered to plaintiff's counsel by defendant's counsel, which tender was refused by plaintiff and his counsel, solely on the ground that the defendant was indebted to the plaintiff in the manner and form alleged in the plaintiff's declaration, and that the defendant immediately following the 13th day of each month thereafter tendered to the plaintiff and his counsel the full sum of $50.00 per month covering disability income on the second policy and $20.00 per month on the first policy, up to and including disability claims for February 13, 1934, all of which sums, aggregating $910.00 the defendant has paid into the treasury of this Court; that the defendant has heretofore duly issued and delivered notice of waiver of the premiums accrued upon said policies, and each of them.

That all disability claims under said policies, and each of them accruing since Jan. 13, 1933 have been paid into Court but not including disability claims accruing March 13, 1934, that all premiums maturing on said policies have been waived up to and including the premiums maturing the first policy the 9 day of Jany. 1934, the second policy the 7th day of Feby., 1934.

(4) That the defendant has paid all of the costs of the Court in each of the above entitled causes, including the costs accruing in the State Court prior to removal, up to and including the filing of the pleas in this Court.

(5) That at the hearing of this cause either party may introduce in open Court further and additional evidence as may be relevant, material and competent, not inconsistent with the foregoing agreed statement of facts.

[fol. 174] It is further agreed that the said Roy Mobley has been continuously totally, and permanently disabled, within the meaning of the terms of said policy, since the operation for appendicitis up until the present date, but that the defendant does not admit that he is permanently disabled for the future.

It is further agreed that none of the contants of the confidential reports or the doctors' reports made to the company concerning the plaintiff, were ever made known to the plaintiff at any time before the filing of the law suit herein by him.

It is further agreed that the plaintiff was, at the time of the filing of the suit, and is now, a citizen of the State of Mississippi, and the defendant is a citizen of the State of New York.

It is further agreed that the plaintiff is 32 years old this coming June, 1934.

Mr. Mize objected to the introduction of the letters set out in the agreed statement of facts which were subject to objections for relevancy.

Mr. Mize objected to the introduction of the letter dated July 8, 1933, to the New York Life Insurance Company, upon the ground that it is irrelevant, incompetent, and immaterial, for the reason that the breach had already occurred conclusively, and that no action the company could thereafter take would restore the policy to its——

By Mr. Watkins: Their own letter to us.

By Mr. Mize: But it was long after we had almost implored them to pay the policy, and now it is our contention that this policy had been completely breached, and [fol. 175] that no conduct of theirs after they had reconsidered it and we wrote them what we were going to do—they finally wrote us that after reconsideration of it they adhered to their former decisions, in which they had notified him that they were cutting off his disablity payments, and that on April 15th, when they notified him that the policy had lapsed and become payable, and the only way to do it would be to reinstate it, that there was a complete, total breach of the policy, and that the correspondence set out as follows: Letter of July 8, 1933, from my firm to the New York Life Insurance Company, and the letter dated July 12, 1933, from F. S. Lantry, Chairman——

By the Court: Read it, and I will pass upon it.

By Mr. Mize: I have no objection to reading the letters, so far as that is concerned.

By the Court: Note your objection, and we can bring it up later.

By Mr. Mize: I wanted to get it to the stenographer. I just want it known that I am objecting, and I am willing for the Court to reserve a ruling on it, and read the letters.

By the Court: Very well.

By Mr. Mize: Also object, for the same reasons, to the letter dated July 17, 1933, from the New York Life Insurance Company to Dr. J. A. Dorsett.

[fol. 176] Also object to the report of Dr. Dorsett to the New York Life Insurance Company referred to in Agreed Statement of Facts, as received about July 18, 1933, and which is attached to the Agreed Statement of Facts as Exhibit No. 12.

Object to the letter of Mr. F. S. Lantry, Chairman, to Dr. Dorsett, dated July 28, 1933.

Object to the letter of Dr. J. A. Dorsett dated August 2, 1933, all for the reasons that the contract had been breached by the defendant, and after it had finally and conclusively notified the plaintiff and his attorneys that it had reconsidered the claim and adhered to its former decision to deny any further liability, that there was then a breach of the contract, and any correspondence thereafter was self serving, and irrelevant, incompetent, and immaterial.

By the Court: The Court will reserve the ruling for the present.

Dr. Fred S. Gay was then called as a witness on behalf of the Plaintiff and testified as follows:

My name is Dr. F. S. Gay and my profession is practicing medicine. I have been practicing medicine since 1904, and am duly licensed and authorized to practice under the laws of Mississippi.

I know Roy Mobey and examined him professionally the first time in March, 1933, and have seen him several times since then. I examined him yesterday and it is my opinion that he is totally and permanently disabled for the rest of his life and do not think he will ever be able to engage in any work of any kind whatsoever. He is suffering from chronic myocarditis. If he should have proper treatment, proper

[fol. 177]-rest and relief from worries and financial troubles that would have a tendency to prolong his life. With such treatment he could expect to live practically the normal length of his life. If he were to undertake to do any work he would suffer and it might kill him. He had chronic myocarditis when I first examined him in March, 1933, and has had it ever since. His condition does incapacitate a man from doing some work. His condition does indicate the weakening of the muscles of the heart and the weakening of the muscle structure and would state that he is not able to do any work at present and have never seen one get well, but if a man is free from worry and doesn't exercise too strenuously they live a long time. He would live as long with this condition with no worry or work as long as he would without it, and at the same time not be able to do anything.

Dr. E. A. Copeland was next called as a witness for the plaintiff and testified as follows:

I live at Jackson, Mississippi. Do not have any profession much now but have been practicing just a little bit around among friends since December. I have been disabled from work. I am a duly licensed practitioner under the laws of Mississippi and I practiced some twenty-two years before I was injured.

I know Roy T. Mobley. I examined him professionally and find that he is suffering from Myocarditis. I am sure that he is permanently and totally disabled for the rest of his life.

I practiced medicine in Jackson, Mississippi, and have known Mr. Mobley directly about seven years.

I presented a claim to the New York Life Insurance Company for total and permanent disability in 1931. Mr. Mobley was not my lawyer at that time. Mr. Mobley before his [fol. 178]-operation was my lawyer in another claim. I had a five thousand dollar policy and the company took it over. I filed suit in Perry County and it was removed to the Federal Court at Biloxi and I settled with them for four thousand dollars and surrendered the policy.

Mr. Watkins then asked if at the same time Dr. Copeland did not have policies with three other companies and the question was objected to by Mr. Mize. Mr. Watkins stated he wanted to show his interest and his bias. Mr. Mize

stated that he made no objection to his claim against the New York Life Insurance Company but that the fact he had claims on policies in some other insurance companies, his objection was in this connection that any other life insurance or policies that he held he was objecting to as being irrelevant and immaterial; that it is competent for him to show any controversies that he may have had with the New York Life Insurance Company, as going to his interest, but policies in any other life insurance companies could not throw any light on this case.

The Court stated it would be competent to show his interest and bias and his credibility as a witness, to which exception was taken by Mr. Mize.

I collected disability from four companies altogether, namely the National Life, $25,000.00; Mutual Benefit Health & Accident, $2600.00; New York Life, and a little fraternal insurance with the Mississippi Medical Association $3000.00, making a total of about $40,000.00. I am 49 years old.

He was then asked if he was a candidate for Governor of Mississippi, but stated that he was going to ask the people to elect him Governor but had not publicly announced making a campaign but it was in the newspapers, but am not an active candidate or inactive candidate.

[fol. 179] From 1931 to 1933 I collected practically $40,000.00 for total and permanent disability.

The New York Life Insurance Company that is being sued by Roy Mobley is the same company that I sued and I think Mr. F. S. Lantry was Chairman at that time. They did not pay me before I filed suit. I was making $12,000.00 a year before I was disabled after the accident and I paid for every dollar of this insurance and did not owe them anything.

F. E. Cottrell was next called as a witness for the plaintiff, his testimony being as follows:

I live at Gulfport and my business is Life Insurance. I have been with the Mutual Benefit of New Jersey, Pacific Mutual of Los Angeles. I have in my possession the tables that are usually used by all standard Life Insurance Companies in writing life insurance.

The life expectancy of a man 31 years old 34.63.

The life expectancy of a man 31 years of age was objected to by counsel for defendant on the ground that the tables are only relevant and competent for a man in normal health and never a man suffering from permanent and total disability. The Court stated that could be brought out in the cross-examination.

The book I have is what is known as the American Table and it is calculated the length of life of a person of normal good health.

Q. You say 31. The agreed statement of facts show that Mr. Mobley will be 32 in June. Therefore, you should say 32, should you not, sir, 32 years old?

A. It depends upon whether you take the date—whether you use the age now or the time this contract was in question.

[fol. 180] Q. You are using the age 31?

A. Yes, sir.

By Mr. Mize: That is the age I asked him, on the theory that the breach was made when he was 31.

This table is used by insurance companies to show how long people do live from information gathered over a hundred years, showing how long the average man lives. It has no relation to persons who are totally and permanently disabled.

Motion was thereupon made by Mr. Watkins to exclude and the Court overruled the motion for the reason that the doctor testified that he could live to the length of a normal man, and this testimony is simply permitted to go to the jury for their guidance as to how long a normal man might live, but not to instruct the jury that a man in the condition of the plaintiff would live that long, or that would be an inference.

Exception was taken by Mr. Watkins.

By Mr. Mize: Your Honor, we will ask that the agreed statement of facts may be filed, and I take it that it is not necessary to offer the agreed statement of facts formally in evidence. I think when it is filed with the clerk, that is sufficient; otherwise, I should like to offer it in evidence, with the exception of those letters to which I have heretofore made objections.

By the Court: All right. I might make a ruling on those objections. Is all the testimony in?

[fol. 181] The two original policies, one being No. 7802419 and the other No. 10340538 were then introduced in evidence, said policies being the same policies set out in the original declaration, and are not copied herein for that reason.

A. L. Evans was next called as a witness for the plaintiff, and testified as follows, to-wit:

I live in Gulfport and am engaged as a Certified Public Accountant and am a duly licensed and qualified Certified Public Accountant for the State of Mississippi. I have been a C. P. A. since 1929. I received special training in this line of work. Prior to 1929 was a bookkeeper and had been engaged in that kind of work for approximately ten years working for the Weston Lumber Company at Logtown, Mississippi. I have had experience and occasion to go into various kinds of accountancy work and am familiar with mathematics. I am able to determine the life insurance policy, the present value of same with reference to payments spread out over a period of time. I have been given two policies in favor of Roy T. Mobley with the New York Life Insurance Company to examine. I have been able to determine the value of the two policies and value the two of them at $21,309.84.

Whereupon an objection was made by the attorney for the defendant to the question relative to the value of the policies on the ground of immateriality, irrelevancy and incompetency and the objection was overruled by the Court.

The value of the policies was figured as of March 13, 1933.

[fol. 182] Objection was again made by the attorney for the defendant on the ground that same was immaterial, irrelevant and incompetent.

The amount of interest on the value of the two policies is $1,250.15 and the total amount is $22,559.99.

Defendant again objected on the same ground as hereinbefore set out and the objection was overruled and exception allowed.

Calculation on both of the policies was made at the same time and I have not separated them. Taking his age and the mortality table I figured the value of the two policies. I added to this the present value of the face of the policy. I did not charge the assured with the premium. The present values of the total permanent disabilities is $18,784.84, and the present value of the face of the policies is $2,525.00. This amount was arrived at by taking the present worth of one dollar, compounded at three per cent interest. This was multiplied by the face of the policy.

Q. Do the monthly installments have anything to do with it?

A. It does have in this way: The way we have arrived at that, we have taken the value of one dollar at the beginning, and at the end of each year, in order to establish the average value of the dollar. In other words, the insured would be entitled to $70.00 a month over a period of years, you see.

Q. What does the $70.00 a month have to do with it? How did you figure that into it?

A. We figured that on an average value of one dollar for each year.

Q. Of his expectancy?

A. Of his expectancy, 34.63 years.

Q. How do you arrive at that?

[fol. 183] A. Well, the present value of a dollar, payable at some future date is shown on this table. For instance, we find that the value of a dollar to be compounded at three per cent interest over a period of one year, the present value of that is 970873.79.

The value of a dollar to be paid thirty years from now is 411986.76 and the last payment would be 34½ years which figures 36071415. An annuity of $70.00 per month would cost $18,784.84 compounded at three per cent. I am not a licensed insurance agent. Three per cent compound interest was provided in the policy which was paid on money left with the company and that is the guaranteed rate of interest.

Thereupon the plaintiff rested.

DEFENDANT'S MOTION TO EXCLUDE PLAINTIFF'S EVIDENCE

The attorney for the defendant then made a motion to the Court to exclude all the evidence offered by the plaintiff for the reason that same does not establish or tend to establish any liability upon the part of the defendant, to which motion the Court stated it would reserve the ruling.

J. C. HUGGINS was next called as a witness for the defendant, his testimony being as follows:

My name is J. C. Huggins, I am forty years of age and a physician having graduated from Tulane University. I practice in Jackson, Mississippi and have been practicing for ten years. I am Chief Medical Examiner for the New York Life Insurance Company at Jackson, Mississippi and have held that position since 1926.

I examined Roy T. Mobley on the 26th of January, 1933, at my office in Jackson. I gave him the required physical examination and observation that is required by the company on disability claims.

[fol. 184] Objection was made by attorney for the plaintiff as it was admitted in the record that he was totally and permanently disabled up to the time of the trial, to which objection the Court reserved the ruling.

The trouble from which the plaintiff's doctor testified the plaintiff was suffering is chronic myocarditis and indocarditis. Dr. Copeland stated it was myocarditis and Dr. Beck stated that it was indocarditis and myocarditis. Chronic myocarditis is an inflammation of the heart muscle itself; not necessarily a degeneration of the heart muscle. Indocarditis is an inflammation that may be acute or chronic of the valves and interlining of the heart. I did not find any indication of that trouble when I made the examination in January, 1933. The report dated February 8th, 1933 (hereinbefore copied) stated my best judgment on the matter.

Objection was thereupon made by the plaintiff's attorney on the ground that the statement was in conflict with the agreed statement of facts, but he later withdrew his objection.

I noticed in this record a report of Dr. Dorsett of Leasdale, Mississippi dated July 24, 1933, in which he found chronic heart trouble and chronic heart trouble could develop between the time I examined him and the date Dr. Dorsett examined him. Myocarditis would not prevent the man from doing work of any kind. If the heart muscle was damaged there would probably be no complete recovery but there have been cases that have recovered from myocarditis. A man could do light work that would not require any physical exertion.

Indocarditis is more or less different, do not think a person could be completely cured from indocarditis. Very light work could be done by a person with chronic myocarditis or indocarditis without injury to himself but it would [fol. 185] depend on the stage to which it had reached. I did not have any ill will or dislike for the plaintiff, knew him for a while casually, not intimately and liked him.

I am the company's doctor and think I made about four or five reports to the company and among the first reports I thought he would be able to go to work in about sixty days. I made a report June 24th, 1933; also one August 7th, 1931. On the August 7th, 1931, report I did not state how long he would be disabled, nor on the report of February 24th, 1932, did I state how long I thought he would be disabled. I made a report on the 26th of January. The treatment of myocarditis depends on its severity and the proper treatment of the plaintiff if he had myocarditis was rest. I do not remember if I examined the plaintiff after January 26th, 1933, or not, but my last report shown was my last examination made by him. A man may be totally and temporarily permanently disabled but may afterwards get better and do some light work.

By the Court (interrupting):

Q. Did you say he could be totally and temporarily permanently disabled?

A. No, sir, not permanent. I retract that statement. I didn't catch the permanent. He may be totally disabled temporarily, temporarily totally disabled, and yet regain his ability to do some work gradually, even if it is light work, and at times a man may be temporarily totally disabled, and regain ability to do the same work he was doing before he was disabled.

If a man were suffering from myocarditis and indocarditis I would expect him to lose weight. I did not notice any loss of weight in the plaintiff.

This was objected to by attorney for the plaintiff as not being in rebuttal of anything.

[fol. 186] The next witness called was FRANK S. LANTRY as a witness for the defendant, who testified as follows:

My name is Frank S. Lantry and I live in South Orange, New Jersey, and work for the New York Life Insurance Company. I have been with them a little over 35 years. I am Chairman of the Committee on Disability Claims. I have been Vice-Chairman and Chairman of that Committee since January 1st, 1926. All disability claims pass before my committee. We handle some 16,000 new claims a year and sometimes over 20,000. Claims are passed on in my department to determine whether or not they should be recognized and paid by the Company. There are seven members of my committee. In addition to these there are thirteen or fourteen claim examiners. No one out of the home office has authority to pass on these claims.

Objection was made by plaintiff's attorney with reference to the wish and desire of the Committee stating that self-serving letters show what their desire is.

By Mr. Watkins: I want to show their good faith.

By Mr. Mize: Any self-serving declaration is certainly not competent, and that is what that would be. Just a question of whether they did or did not.

By Mr. Watkins: No, it isn't. Might have made a mistake. That would not make us liable for the maturity of the policy if we made a mistake.

[fol. 187] The Court sustained the objection and exception noted.

By Mr. Watkins:

Q. Please tell the Court in claims of this character, without any reflection upon the plaintiff whatsoever, whether or not there is a very broad or wide opportunity for fictitious claims?

By Mr. Mize: Object to that.

By Mr. Watkins: They are charging us with bad faith. We want to show the only——

By the Court: Do you charge bad faith?

By Mr. Mize: My objection is, if the Court please, it is just a question of breaching the contract, or whether he did not, and the good faith or bad faith is immaterial.

By the Court: The Court will sustain the objection. Just charged with a breach. That is the reason I sustain the objection.

By Mr. Watkins:

. Tell the Court whether or not, in examining claims of this character, there is a border line of claims when it is difficult to tell whether a man is totally and permanently disabled, or not?

By Mr. Mize: Object to that as irrelevant and immaterial. [fol. 188] By Mr. Watkins: I want to show that these were border line cases.

By the Court: Overrule the objection and exception allowed.

By Mr. Watkins:

Tell the Court what is a border line claim?

A. Well, I will reduce it to as few words as possible. It might be a claim in which the Insured had a different idea of the policy from the actual meaning of the terms of the policy. Might be a case involving the question of the Insured's honesty in presenting the claim.

By the Court: It is a doubtful claim?

A. Yes, sir, it is a doubtful claim to us.

Q. Please state to the Court as to whether or not in reviewing that claim if you regarded this as a doubtful claim?

By Mr. Mize: Object to that as irrelevant and immaterial.

A. Yes, sir.

By the Court: Overrule the objection.

By Mr. Mize: Exception.

A. There were periods in which we regarded it as an extremely doubtful claim.

[fol. 189] By Mr. Watkins:

Q. You have examined the report of Dr. Huggins, dated January 26, 1933, as well as the supplementary report of February 8, 1933, have you, sir?

A. Yes, sir.

Q. Tell the Court whether or not there is anything in that report from which your Committee could find that the man was totally and permanently disabled at that time?

By Mr. Mize: Object to that, irrelevant and immaterial, and in contradiction to the agreed statement of facts.

By Mr. Watkins: I am asking him to interpret the doctor's report. Was there anything to show that this man was permanently disabled?

By the Court: I think the report speaks for itself. Sustain the objection.

By Mr. Watkins:

Q. Please tell the Court when the first time was that the company received information that this man was suffering from any chronic heart trouble?

By Mr. Mize: Object to that. The report has been introduced in evidence, and if it was in writing of course the writing——

By the Court: Point it out.

By Mr. Watkins:

Q. When was the first information the company received this man——

[fol. 190] By the Court: I presume he means with reference to the time that you rejected his claim for total and permanent disability.

By Mr. Watkins: I am talking about the date they recognized it and submitted proof for the first time that this man had chronic myocarditis. The first time that information came to the company. I want him to identify it, if he can.

A. The first that any preliminary examination or reports revealed any definite signs of disease of that nature was the report of Dr. Dorsett on July 24, 1933.

By Mr. Mize: Object to that upon the ground that the contract had been breached, and upon the ground that the documents speak for themselves, and are the best evidence.

By the Court: Sustain the objection, so far as that is concerned, but will allow this to be brought out for the information of the Court as to when this information came to them, and not in contradiction of the agreed statement of facts, but simply to point out to the Court when this information came to them, because it is already in the agreed statement of facts. More a matter of argument than it is of testimony.

By Mr. Watkins: It really is, yes, sir. Of course the agreed statement of facts—it is in the agreed statement of facts.

I could not state whether I had any prior information that this man was suffering from chronic myocarditis without refreshing my memory with the file. My recollection is [fol. 191] that there was some statement as to a form of heart trouble. I think there was a report of some myocardial insufficiency which we understood was based on his blood pressure findings. We had not been able to demonstrate that there was any objective signs of a heart condition.

I am not a doctor but perhaps from long acquaintance with those things drop into a language that borders on the medical. We receive in a year approximately 16,000 new claims, and that we have somewhere in the neighborhood of between twenty and twenty-three thousand claims as active claims, in which we are paying. The slowness with which a case is handled depends on the circumstances of the case. Do not give them notice about every six months that they are no longer disabled. I do not recall the name of the doctor who first stated there was a myocardial insufficiency, but I did receive a letter from Dr. J. E. Beck on May 4th, 1932.

Thereupon the defendant rested.

RULING ON OBJECTIONS TO TESTIMONY, ETC.

By the Court: On the objections to the evidence, Mr. Mize has an objection to the defendant's evidence after page 52, I believe it was, in the agreed statement of facts. That objection will be overruled, the exception allowed.

I am not prepared to follow the Rasco case (12 Fed. (2d) 693) but it is not necessary for the Court to decline to follow it at this time because it can easily be distinguished from this case. There was more required of the insured in the Rascoe case than is required of the plaintiff. She was required to submit to periodical examinations, and pay her doctor. In this case the insured was only required to furnish due proof of his total disability. Due proof means [fol. 192] reasonable proof. What is reason proof if not necessary in this case for the Court to decide, because there has been no dispute between the plaintiff and the defendant in that regard. The plaintiff was furnished all proof that was required. According to the plaintiff's contention, under the allegations in his declaration and under the proof, the plaintiff became totally and permanently disabled, made the necessary proof, and the proof was accepted for a while by the insurance company, and then rejected. There was nothing further for the plaintiff to do, except to furnish, upon request, due proof of a continuation of his disability. It was a contract that he had fully performed, and the insurance company owed him the monthly payments so long as he continued to be totally disabled. It being a contract that had been fully performed by the insured, and the insurance company being liable to him for the monthly payments, there was no anticipatory breach of the contract that would render the entire policy due or the present value of it due. Neither do I think that there has been such a repudiation of this policy as would make the defendant liable to the plaintiff for the present cash value of the policy. There is no claim that the policy was invalid from its inception, and as all installments with interest and Court costs have been tendered, the peremptory instruction requested by the defendant should be granted.

To which action of the Court in granting the peremptory instruction the plaintiff excepted before said jury retired, and the exception by the Court was allowed.

Order Approving Bill of Exceptions

The foregoing bill of exceptions is this day examined, approved and allowed as a bill of exceptions in the fore-

going case and within the time as ascertained by the Court and where the testimony is quoted in the form of questions [fol. 193] and answers it is necessary that same be so quoted in order that it might convey the meaning that should be accorded said testimony.

This the 8th day of May, 1934.

E. R. Holmes, United States District Judge.

O. K.; W. H. Watkins.

[File endorsement omitted.]

In United States District Court

No. 998

Roy T. Mobley

vs.

New York Life Insurance Company

Judgment—Filed Feb. 23, 1934.

The jury, having heard the evidence and instructions of the Court, retired and returned the following verdict:

"We, the jury, find for the defendant."

Wherefore, it is ordered and adjudged that the plaintiff have and recover nothing by his suit, but that the same be dismissed; that the plaintiff pay all costs to be taxed in the case subsequent to the filing of defendant's pleas. The clerk of the Court is ordered to turn over to the plaintiff or his counsel of record the sum of $260.00, paid into the treasury of the Court.

Ordered and adjudged this 23rd day of February, A. D. 1934.

[fol. 194] IN UNITED STATES DISTRICT COURT

No. 998

[Title omitted]

MOTION FOR NEW TRIAL—Filed Feb. 27, 1934

Comes the plaintiff, Roy T. Mobley, and moves the Court to set aside the verdict rendered in this cause and grant him a new trial for the following reasons:

1. The Court erred in overruling objections of the plaintiff to the letters that were written after the 15th of April, 1933, as shown by the stenographer's notes.

2. The Court erred in granting a peremptory instruction for the defendant.

3. Other causes to be assigned on the hearing.

S. C. Mize, Attorneys for Plaintiff.

IN UNITED STATES DISTRICT COURT

No. 998

[Title omitted]

ORDER OVERRULING MOTION FOR NEW TRIAL—Filed Feb. 27, 1934

This cause this day came on to be heard on the motion of the plaintiff to set aside the verdict of the jury and judgment rendered therein and grant the plaintiff a new trial, and the Court having heard and considered same is of the opinion that same should be overruled.

It is therefore ordered, adjudged and decreed that said motion be and same is overruled, to which plaintiff excepts in open Court and said exception allowed.

[fol. 195] Upon application of the plaintiff in open Court for sixty days in which to prepare and present a bill of exceptions it is therefore ordered that the plaintiff be and he

is allowed sixty days in which to prepare and file his bill of exceptions.

Ordered, this the 27th day of February, 1934.

E. R. Holmes, Judge.

[File endorsement omitted.]

In United States District Court

No. 1001

Roy T. Mobley

vs.

New York Life Insurance Company

Judgment—Filed Feb. 23, 1934

The jury, having heard the evidence and instructions of the Court, retired and returned the following verdict:

"We the jury, find for the defendant."

Wherefore, it is ordered and adjudged that the plaintiff have and recover nothing by this suit, but that the same be dismissed; that the plaintiff pay all costs to be taxed in the case subsequent to the filing of defendant's pleas. The clerk of the Court is ordered to turn over to the plaintiff or his counsel of record the sum of $780.00, paid into the treasury of the Court.

Ordered and adjudged this 23rd day of February, A. D. 1934.

[fol. 196] In United States District Court

No. 1001

[Title omitted]

Motion for New Trial—Filed Feb. 27, 1934

Comes the plaintiff, Roy T. Mobley and moves the Court to set aside the verdict rendered in this cause and grant him a new trial for the following reasons:

1. The Court erred in overruling objections of the plaintiff to the letters that were written after the 15th of April, 1933, as shown by the stenographers notes.

2. The Court erred in granting a preemptory instruction for the defendant.

3. Other causes to be assigned on the hearing.

S. C. Mize, Attorneys for Plaintiff.

In United States District Court

No. 1001

[Title omitted]

Order Overruling Motion for New Trial—Filed Feb. 27, 1934

This cause this day came on to be heard on the motion of the plaintiff to set aside the verdict of the jury and judgment rendered therein, and grant the plaintiff a new trial, and the Court having heard and considered same is of the opinion that same should be overruled.

It is therefore ordered, adjudged and decreed that said motion be and same is overruled, to which plaintiff excepts in open Court and said exception allowed.

[fol. 197] Upon application of the plaintiff in open court for sixty days in which to prepare and present a bill of exceptions, it is therefore ordered that the plaintiff be and he is allowed sixty days in which to prepare and file his bill of exceptions.

Ordered, this the 27th day of February, 1934.

E. R. Holmes, Judge.

[File endorsement omitted.]

In United States District Court

Consolidated Causes Nos. 998 and 1001, Law

[Title omitted]

Order Granting Extension of Time—Filed April 21, 1934

This cause this day came on to be heard on the petition of the plaintiff R. T. Mobley to be allowed until the 4th of

June, 1934, in which to prepare and have allowed his bill of exceptions, and the Court having considered same it is now ordered by the Court that the plaintiff be granted an extension of time and he be allowed until the 4th of June, 1934, in which to prepare and have allowed his bill of exceptions.

Ordered, this the 18 day of April, 1934.

E. R. Holmes, Judge.

[fol. 198] In United States District Court

Consolidated Causes Nos. 998 and 1001

[Title omitted]

Agreement as to the Records—Filed May 30, 1934

It is hereby agreed by and between the plaintiff and the defendant in making up the record for appeal that the clerk may omit copying the policy of insurance that is filed as Exhibit to the declaration in cause No. 1001, and that said policy is identically the same as the policy in cause No. 998 except as to the date and the amount, and that the clerk may follow the praecipe forwarded by the plaintiff in making up the record in this cause except as changed in this agreement.

It is further agreed that if any parts of the record have been overlooked that the appellant will call the same to be certified to the Circuit Court of Appeals on the request of the appellee.

Witness our signatures this the 23rd day of May, 1934.

Mize, Thompson & Mize, Attorneys for Plaintiff.

Watkins & Eager, Attorneys for Defendant.

[fol. 199] In United States District Court

Consolidated Causes Nos. 998 and 1001, Law

[Title omitted]

Petition for Appeal—Filed May 21, 1934

Roy T. Mobley, the plaintiff in the above styled cause, feeling itself aggrieved by the judgment entered in said

consolidated causes on the 22nd day of February, 1934, hereby petitions the United States District Judge of the Southern Division of the Southern District of Mississippi, the Honorable E. R. Holmes, to allow and grant him an appeal in this cause to the United States Circuit Court of Appeals for the Fifth Circuit, as provided by law, but without supersedeas, for the reasons specifically set out in the assignment of errors herewith filed; and that said appeal may be allowed and the plaintiff authorized to do all things granted to it by such appeal; and that the Clerk be authorized and directed to certify a transcript of the record in said causes, as granted by said appeal, under seal, and to transmit the same to the United States Circuit Court of the United States of America, at its place of convening in the Post Office Building in the City of New Orleans, State of Louisiana.

Roy T. Mobley, Plaintiff. S. C. Mize, Attorneys for for Plaintiff.

[fol. 200] In United States District Court

Consolidated Causes Nos. 998 and 1001, Law

[Title omitted]

Order Allowing Appeal— Filed May 21, 1934

On the hearing of the petition of Roy T. Mobley that he be allowed on appeal in consolidated causes No-. 998 and 1001, Law, and upon consideration, it is now

Ordered that an appeal to the United States Circuit Court of Appeals for the Fifth Circuit from the judgment heretofore rendered in this cause be and the same is hereby allowed, without supersedeas, and that citation be issued and served as provided by law, and that a duly certified transcript of the record pertaining to said judgment and all proceedings connected therewith be forthwith transmitted to said United States Circuit Court of Appeals for the Fifth Circuit, at New Orleans, Louisiana.

It is further ordered, that the amount of the cost bond on appeal be and the same is fixed at five hundred ($500.00) as bond for cost and damages that might be adjudged on account of the said appeal, and the said petitioners now

presenting bond in the sum of five hundred dollars with United States Fidelity & Guaranty Company as surety thereon, it is ordered that the same be and it is hereby duly approved, and that all proceedings, documents and the record and transcript be sent to the United States Circuit Court of Appeals for the Fifth Circuit at New Orleans, Louisiana.

Ordered, this the 15th day of May, 1934.

E. R. Holmes, Judge of the United States District Court for the Southern Division of the Southern District of Mississippi.

[fol. 201] Bond on Appeal for $500.00, approved and filed May 21, 1934, omitted in printing.

[fol. 202] In United States District Court

Consolidated Causes Nos. 998 and 1001, Law

[Title omitted]

Assignment of Errors—Filed May 21, 1934

Comes the plaintiff in error and respectfully says that in the Court below there were errors committed by the Trial Court which are apparent on the face of the record.

1. That the Court erred in overruling the objection of the plaintiff to the introduction of a letter dated July 12th, [fol. 203] 1933, from the New York Life Insurance Company to plaintiff's attorneys to the effect that it had received a letter from plaintiff's attorney of July 8th, 1933, and that the New York Life Insurance Company was willing to give further consideration to the question of plaintiff's claim for further disability benefits because,

(a) Said letter and evidence was a self serving declaration after the defendant had completely and finally breached its contract and had been notified that plaintiff was preparing to file suit on said policy of insurance.

(b) That said letter and evidence was irrelevant, immaterial, and incompetent to the issues before the Court as the policy of insurance had been completely breached.

2. The Court erred in overruling the plaintiffs objection to a letter dated July 17th, 1933, addressed to Dr. J. A. Dorsett from the defendant company because,

(a) Said letter was a self-serving declaration.

(b) Said letter and evidence was hearsay.

(c) Because said letter was irrelevant, immaterial and incompetent to the issues then before the Court as the contract had already been completely breached on the date of the letter and its introduction was an effort on the part of the defendant to build up its defense by hearsay testimony, said letter being in substance to the effect that the company had recently received information that the plaintiff was still entitled to disability benefits and there was considerable doubt in the minds of the company as to whether or not he was totally disabled and requesting the [fol. 204] doctor to make an examination of the insured and give the company a report of his condition.

3. The Court erred in admitting the report of Dr. J. A. Dorsett dated July 24th, 1933, because

(a) Said letter and evidence was hearsay.

(b) Said letter and evidence was irrelevant, immaterial and incompetent to the issues then before the Court because the company had completely breached its contract prior thereto.

4. The Court erred in overruling the objection of the plaintiff to the letter and evidence of F. S. Lantry to Dr. J. A. Dorsett of July 28th, 1933, asking for a further report on the examination of the plaintiff and in overruling the plaintiffs objection to the letter of Dr. Dorsett replying thereto dated August 2nd, 1933, to the effect that said Roy T. Mobley was not totally disabled from some work but was not able to do hard work and was not confined to his bed, because,

(a) Said letters and evidence was hearsay.

(b) Because said letters and evidence was irrelevant, immaterial and incompetent to the issues before the Court as the contract of insurance had been completely breached prior thereto.

5. The Court erred in overruling plaintiffs objection to the introduction of the letter of August 9th, 1933, from Thomas A. Buckner, President of the company to Roy T. Mobley to the effect that the premiums on the policy were waived for the reason that said letter was a self-serving declaration and was irrelevant and immaterial and incom- [fol. 205] petent to the issues before the Court as the policy of insurance had already been completely breached prior thereto, and suit filed on said cause.

The objections made by the plaintiff to all of the above correspondence was taken under advisement by the Court and ruling reserved until the conclusion of the case when the Court overruled same and allowed the exception.

6. The Court erred in overruling the objection of the plaintiff to the question propounded by defendant to its witness Lantry to the effect whether or not in examining claims of this character there is a border line of claims when it is difficult to tell when a man is totally and permanently disabled or not, and in overruling the objection of the plaintiff to the further question to tell the Court what a border line claim was, which question was answered that a border line claim was one in which the insured had a different idea of the policy from the actual meaning of the terms of the policy. It might be a case involving the question of the honesty of claimant in presenting the claim; because said testimony was irrelevant, incompetent and immaterial for the reason the only question before the Court was whether or not the company had breached its contract.

7. The Court erred in overruling the objection of the plaintiff to the testimony of witness Lantry that the claim of plaintiff had been regarded as a doubtful one.

8. The Court erred in giving a peremptory instruction to the jury to find for the defendant because

(a) The defendant company had breached its contract completely and finally before the suit was filed and plaintiff

[fol. 206] did not at any time waive such breach and was entitled to a judgment for the full amount due under the policy.

Respectfully submitted, Roy T. Mobley, by S. C. Mize, Atty.

[File endorsement omitted.]

In United States District Court

[Title omitted]

Prayer for Reversal—Filed May 21, 1934

To the Honorable Circuit Court of Appeals of the United States for the Fifth Circuit, New Orleans, Louisiana:

Now comes the appellant Roy T. Mobley, and prays for a reversal of the judgment of the District Court of the United States, for the Southern Division of the Southern District of Mississippi, in the action brought against said appellee, the defendant, by Roy T. Mobley, the appellant, as plaintiff, which judgment was entered in the office of the Clerk of the District Court of the Southern Division of the Southern District of Mississippi on the 22nd day of February, 1934.

Roy T. Mobley, Appellant. S. C. Mize, Attorneys for Appellant.

[fol. 207] In United States District Court

Consolidated Causes Nos. 998 and 1001, Law

[Title omitted]

Waiver of Service of Citation—Filed May 24, 1934

I, W. H. Watkins, attorney for the New York Life Insurance Company, defendant in the above styled consolidated causes hereby waive service of the citation issued on the 15th of May, 1934, on the appeal from the United States District Court for the Southern Division of the Southern District of Mississippi to the Circuit Court of Appeals for

the Fifth Circuit of the United States, and enter the appearance of the New York Life Insurance Company in the Circuit Court of Appeals as required by said citation.

This the 18 day of May, 1934.

New York Life Ins. Company, by W. H. Watkins, Attorneys for New York Life Ins. Co.

In United States District Court

Law 998 & 1001

[Title omitted]

Præcipe for Record—Filed May 30, 1934

To the Clerk of the Court:

In making up the record in the above styled cause for appeal, you will include the following parts of the record.

First. Caption showing the organization of the Court.

[fol. 208] Second. The Declaration filed by plaintiff in causes No. 998 and No. 1001.

Third. Defendant's first special plea.

Fourth. The defendant's plea of General Issue.

Fifth. The defendant's Notice under the General Issue.

Sixth. The Plaintiff's Replication to the Defendant's Special Plea.

Seventh. The order in minute book 8, page 229, showing consolidation of Causes No. 998 and No. 1001.

Eighth. The Bill of Exceptions.

Ninth. The judgment in Cause No. 998 dismissing Plaintiff's suit which is entered in minute book 8, page 231.

Tenth. The Motion for new trial in Cause No. 998.

Eleventh. The Order overruling the motion for a new trial entered in minute book 8, page 242.

Twelfth. The order entered in Cause No. 1001, dismissing plaintiff's suit recorded in minute book 8, page 232.

Thirteenth. The Motion for a new trial made by plaintiff in Cause No. 1001.

Fourteenth. The order overruling the motion for a new trial in Cause 1001 entered in minute book 8, page 242.

[fol. 209] Fifteenth. The order entered in Causes No.

998 and No. 1001 extending the time in which to prepare and present its bill of exceptions which order is recorded in minute book 8, page 258.

15½. Agreement dated May 23, 1934.
Sixteenth. Petition for Appeal.
Seventeenth. Order allowing Appeal.
Eighteenth. Bond on Appeal.
18½. Assignment of Errors.
Nineteenth. Prayer for Reversal.
Twentieth. This Præcipe.

Mize, Thompson & Mize, Attys. for Plaintiff.

[File endorsement omitted.]

[fol. 210] Clerk's Certificate to foregoing transcript omitted in printing.

RECITAL AS TO CITATION

Citation omitted from the printed record, the original thereof being on file in the office of the Clerk of the U. S. Circuit Court of Appeals.

* * * * * * *

[fol. 211] That thereafter the following proceedings were had in said cause in the United States Circuit Court of Appeals for the Fifth Circuit, viz:

No. 7469

ROY T. MOBLEY

versus

NEW YORK LIFE INSURANCE CO.

ARGUMENT AND SUBMISSION

Extract from the Minutes of January 8th, 1935

On this day this cause was called, and, after argument by Sidney C. Mize, Esq., for appellant, and William H. Watkins, Esq., for appellee, was submitted to the Court.

[fol. 212] IN THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT

No. 7469

(January 16, 1935)

ROY T. MOBLEY, Appellant,

versus

THE NEW YORK LIFE INSURANCE COMPANY, Appellee

Appeal from the District Court of the United States for the Southern District of Mississippi

Before Sibley, Hutcheson and Walker, Circuit Judges

OPINION OF THE COURT—Filed January 16, 1935

SIBLEY, Circuit Judge:

This appeal complains mainly of the instruction by the Court of a verdict for the defendant in the trial of consolidated suits brought by Roy T. Mobley against the New York Life Insurance Company upon two similar policies of life insurance carrying benefits in case of total disability. By the terms of the policies premiums necessary to main-

tain the insurance were due semiannually, but on proof of total disability before the age of sixty subsequent premiums were to be waived and monthly benefits paid so long as the [fol. 213] disability lasted. Proof of continuance of the disability might be demanded not oftener than once a year, and on failure to furnish such proof no future disability payments would be made nor further premiums be waived; but in case of default in payment of premium after total disability the policy might be restored and all benefits paid as if no default had occurred, provided that not more than six months after the default due proof were made of a continuous total disability since the default that would continue for life, or that had continued for three consecutive months. Mobley at the age of thirty-three, while his policies were in force, had an operation for appendicitis with results that totally disabled him, and he collected disability benefits for two years through January, 1933. The Insurance Company on March 1st, 1933, wrote to him: "It appears that for some time past you have not been continuously totally disabled within the meaning of the disability benefit provision contained in the policies. In view of this condition we regret to inform you that no further disability payments will be made, and the premiums due on and after Feb. 7th, 1933, become payable in conformity with the terms of the contracts." Mobley in reply said he was taking immediate legal steps to secure the benefits under the policies. On March 9th the Company wrote that the matter was receiving further attention, and the same day an attorney employed by Mobley wrote the Company demanding payment of $28,980.00 as for a total breach of the insurance contracts and threatening suit. On March 17th the Company wrote the attorney that its medical examiner in January had reported Mobley able to do light work of a remunerative nature, and that he could no longer be considered totally disabled within the definition of the policies, and that payment of benefits had been discontinued, to which decision it would adhere. On April 13th the Com- [fol. 214] pany wrote Mobley that one of the policies had lapsed for non-payment of premium, and urged him to apply for reinstatement to protect his interests. On June 5th it advised him: "Application for reinstatement after default in premium specified above not having been made, notice is hereby given that pursuant to the terms of the

policy the value of the policy has been applied to purchase continued insurance" until June 20, 1937. On June 9th the Company gave notice of the premium falling due July 9th on the other policy. On July 8th Mobley's attorney had written that Mobley did not agree to the action stated in the letter of June 5th, and would sue in a few days. In answer the Company wrote that it was willing to give Mobley's claim for disability benefits further consideration, and asked for a statement from his physician as to his condition since January, and stated that one of its physicians would also call on Mobley to examine him. The examination was made July 24th, and chronic heart disease was found. The Company claimed that this was its first knowledge of the heart trouble. It concluded he was totally disabled and tendered him on August 9th $910.00 accrued benefits, and a written waiver of premiums; but on July 24th suit on one policy had been filed and a few weeks later suit was filed on the other. The Company pleaded the foregoing facts and correspondence and continued the tender with accrued costs. The suits claim a recovery of damages measured by the sum of the disability payments for the life expectancy of Mobley plus the amount that would be due at his death, all reduced to present value, upon the theory of an anticipatory breach of the contracts. The Judge directed that the plea of tender be sustained.

Ordinarily breach of a contract cannot occur until performance is due. In case the promisor prevents performance or disables himself to perform, a right of action at once accrues. In some classes of contracts while executory [fol. 215] on both sides, notably those for personal services and for the purchase or manufacture of goods, or for marriage, a total repudiation of the contract by one party before the time for performance may at the option of the other be treated as a present breach, excusing him from performance on his part and enabling him to sue the repudiator at once for all resulting damages; or he may decline to treat it as a breach and elect to keep the contract in force, tendering performance on his part at the time fixed by the contract and demanding performance of the repudiator. Hochster vs. De la Tour, 2 El. & Bl. 678; Pierce vs. Tennessee Coal & R. R. Co., 173 U. S. 1; Roehm vs. Horst, 178 U. S. 1. This doctrine of an anticipatory breach does not apply to commercial paper or in general to simple prom-

isea to pay money due on an executed consideration. It is said in Kelly vs. Security Mutual Life Ins. Co., 186 N. Y. 16, approved in Killian vs. Metropolitan Life Ins. Co., 251 N. Y. 44, to be confined to contracts to marry, for service, and for goods to be manufactured or delivered, and to have no application to insurance policies. But in Lovell vs. St. Louis Life Ins. Co., 111 U. S. 264, the doctrine was applied to a repudiation by the insurer of an unmatured life insurance contract, but the recovery was measured not by the present worth of the face of the policy but by the amount of premiums paid less the value of the insurance already enjoyed,—now generally called the reserve value of the policy. In Federal Life Ins. Co. vs. Rascoe, 12 Fed. (2d) 693, the doctrine was applied by a divided court to render collectible at once both past and future disability payments as here contended for, and Mobley relies strongly on that case. It has been more conspicuously distinguished and disapproved than followed. In federal courts see Kithcart vs. Metropolitan Life Ins. Co., 1 Fed. Sup. 719; Wyll vs. Pacific Mutual Life Ins. Co., 3 Fed. Sup. 483; Mennsen vs. Travelers Ins. Co., 5 Fed. Sup. 114; Ginsberg vs. Pacific [fol. 216] Mutual Life Ins. Co., 5 Fed. Sup. 296; Hines vs. Fed. Mutual Life Ins. Co., 6 Fed. Sup. 692. It seems opposed in principle to the decision in the Eighth Circuit in Moore vs. Security Trust & Life Ins. Co., 168 Fed. 496, where in effect it is held that while an executory contract of life insurance is capable of anticipatory breach, no contract to pay money is after it has become executed on the part of the promisee. In the State of Tennessee, where Rascoe's policy was made and to be performed, the Supreme Court three years later held that, on a wrongful suspension of a certificate holder, only his annuity benefits in default, and not future instalments, could be recovered. Atkinson vs. R. R. Employees Mutual Relief Society, 22 S. W. (2d) 631. In Mississippi, under the laws of which state the present policy was issued, Rascoe's case has been expressly disapproved. Atlantic Life Ins. Co. vs. Serio, 157 So. 474. That only accrued disability instalments could be recovered had been previously held in Metropolitan Life Ins. Co. vs. Lambert, 157 Miss. 759, 128 So. 750. Similar holdings on instalment insurance benefits have been made in other States, as Woods vs. Provident Life & Accident Ins. Co., 42 S. W. (2d) 499; and Howard vs. Benefit Asso-

ciation of Railway Employees, 39 S. W. (2d) 657, in Kentucky. In Garbush vs. Order of United Commercial Travelers, 228 N. W. 148, the Supreme Court of Minnesota refused to follow Rascoe's case. The Supreme Court of Missouri in Puckett vs. National Annuity Association, — Mo. —, 114 S. W. 1039, held that only benefits past due could be recovered and its Court of Appeals, disapproving the Rascoe case, recently held the same way in Allen vs. National Life & Accident Ins. Co., 67 S. W. (2d) 534; and Chipley vs. National Life & Accident Ins. Co., 67 S. W. (2d) 992. The courts of Texas also refuse recovery for instalments of insurance not due. New York Life Ins. Co. vs. English, 96 Texas 268; State Life Ins. Co. vs. Atkins, [fol. 217] 9 S. W. (2d) 290. Although there is good reason for applying the principle of anticipatory breach to a repudiation of an unmatured policy by the insurer, yet where there is a total or partial maturity of its benefits the insured by a simple suit for what is presently owing can readily establish the status of his contract. If he were allowed a present recovery for all future benefits the calculations on which insurance business is done would be upset, and the purposes for which the benefits were made payable only in instalments would often be defeated. On a War Risk Insurance contract for example it has never been supposed that the insured by winning a contest touching his rights, even when they were totally denied, could recover the present value of future instalments contrary to the very terms of the insurance. Compare United States vs. Worley, Admnx., 281 U. S. 339. Anticipatory breach cannot with this effect be asserted in the present case.

And for another reason there could here be no recovery. In order to — an anticipatory breach of the entire contract there must be a clear and unequivocal repudiation by the promisor of all that remains to be performed, a refusal to be further bound by the contract. Dingley vs. Oler, 117 U. S. 496; Roehm vs. Horst, 178 U. S. 1; Kimel vs. Missouri State Life Ins. Co., 71 Fed. (2d) 921, and cases cited. A reading of the correspondence above set out discloses that at no time did the Insurance Company renounce or repudiate its policies, but founded everything it did upon the terms of them. Even its declaration of lapse and invitation to reinstatement were no repudiation, but in pursuance of their express provisions. All that happened was that

the Company misjudged its obligations. Such an error made in good faith, whether founded in mistake of law or fact, is not repudiation, and does not end a continuing contract, but calls only for its enforcement according to its terms. Mutual Life Ins. Co. vs. March, 56 S. W. (2d) 433; Mas-
[fol. 218] sachusetts Protective Assn. vs. Jurney, 68 S. W. (2d) 455. In this case the Company acknowledged its error and tendered full compensation, together with costs. The insured had no right to anything more.

Judgment affirmed.

[fol. 219] No. 7469

ROY T. MOBLEY

versus

NEW YORK LIFE INSURANCE CO.

JUDGMENT

Extract from the Minutes of January 16th, 1935

This cause came on to be heard on the transcript of the record from the District Court of the United States for the Southern District of Mississippi, and was argued by counsel;

On consideration whereof, it is now here ordered and adjudged by this Court, that the judgment of the said District Court in this cause be, and the same is hereby, affirmed.

It is further ordered and adjudged that the appellant, Roy T. Mobley, and the surety on the appeal bond herein, United States Fidelity & Guaranty Company, be condemned, in solido, to pay the costs of this cause in this Court, for which execution may be issued out of the said District Court.

[fol. 220] CLERK'S CERTIFICATE

UNITED STATES OF AMERICA:

United States Circuit Court of Appeals, Fifth Circuit

I, Oakley F. Dodd, Clerk of the United States Circuit Court of Appeals for the Fifth Circuit, do hereby certify

that the pages numbered from 211 to 219 next preceding this certificate contain full, true and complete copies of all the pleadings, record entries and proceedings, including the opinion of the United States Circuit Court of Appeals for the Fifth Circuit, in a certain cause in said Court, numbered 7469, wherein Roy T. Mobley is appellant, and The New York Life Insurance Company is appellee, as full, true and complete as the originals of the same now remain in my office.

I further certify that the pages of the printed record numbered from 1 to 210 are identical with the printed record upon which said cause was heard and decided in the said Circuit Court of Appeals.

In testimony whereof, I hereunto subscribe my name and affix the seal of the said Circuit Court of Appeals, at my office in the City of New Orleans, Louisiana, in the Fifth Circuit, this 11th day of February, A. D. 1935.

Oakley F. Dodd, Clerk of the United States Circuit Court of Appeals, Fifth Circuit. (Seal United States Court of Appeals, Fifth Circuit.)

[fol. 221] SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed April 1, 1935

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Fifth Circuit is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Endorsed on cover: File No. 39,379. U. S. Circuit Court of Appeals, Fifth Circuit. Term No. 751. Roy T. Mobley, Petitioner, vs. The New York Life Insurance Company. Petition for a writ of certiorari and exhibit thereto. Filed March 4, 1935. File No. 751, O. T., 1934.